A TREATISE OF THE PRINCIPAL GROUNDS AND MAXIMES OF THE LAWES *Of this Nation.*

Very uſefull and commodious for all Students, and ſuch others as deſire the knowledg and underſtanding of the *Laws.*

Lex plus laudatur, quando Ratione probatur.

Written by that moſt Excellent and Learned Expoſitor of the Law, *W. N.* of *Lincolns-Inn*, Eſquire.

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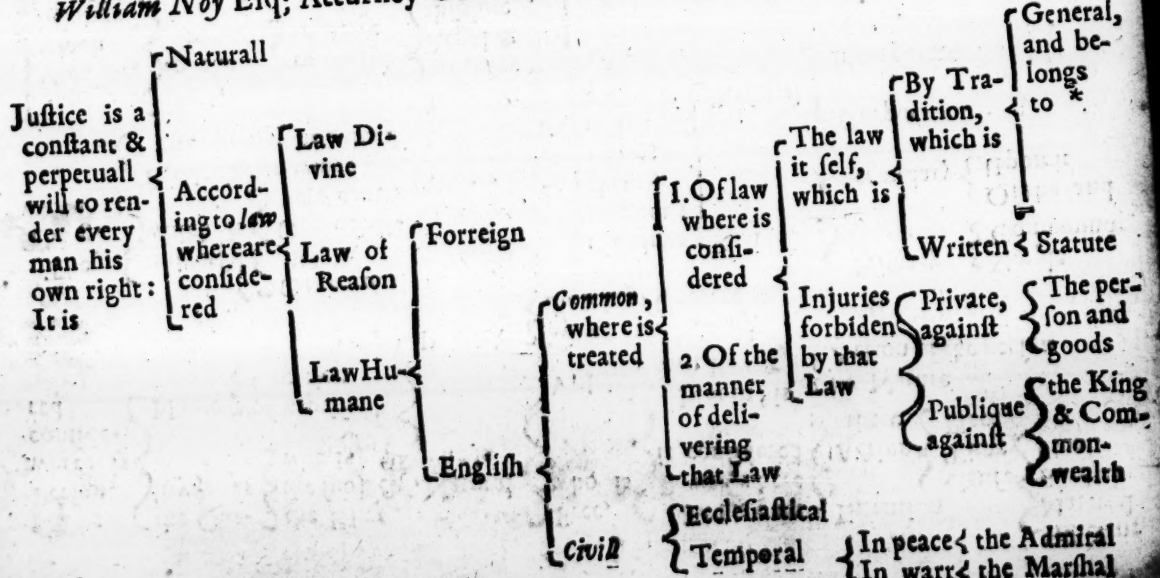
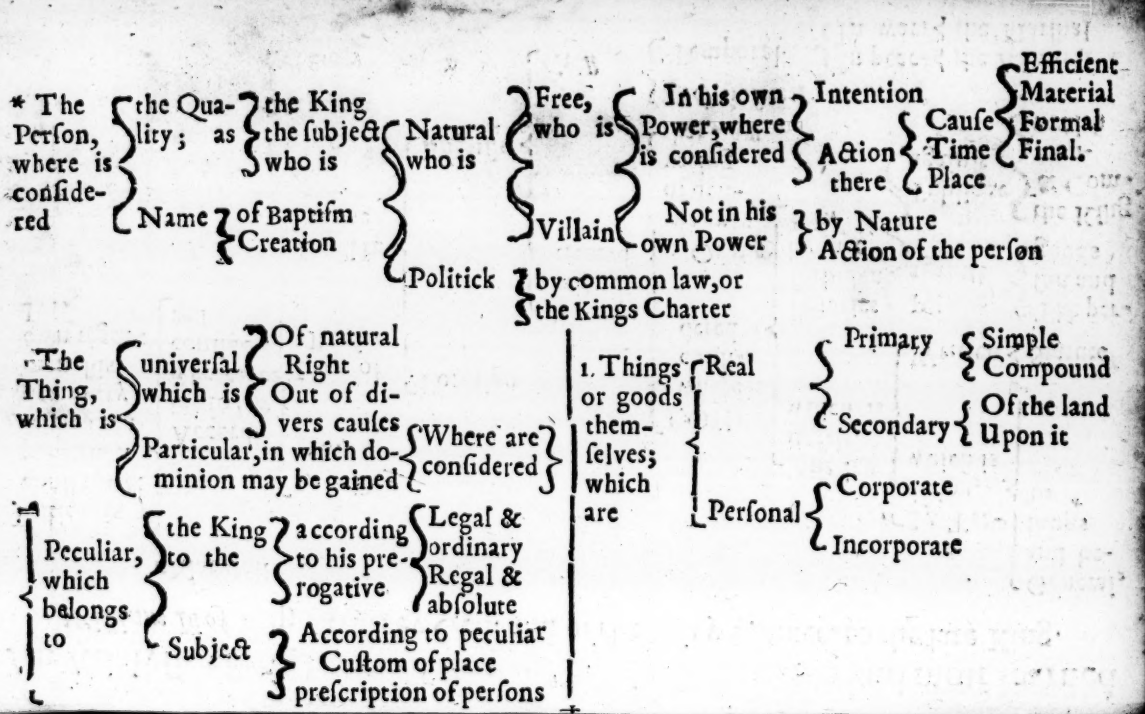
An Analysis of the Laws of *England*, by the honorable and most learned *William Noy* Esq; Atturney Gen: and of the Privy Councel to the late King.




* The Person, where is considered
the Quality; as
the King
the subject who is
Natural who is
Free, who is
In his own Power, where is considered
Intention
Action there
Cause
Time
Place
Efficient
Material
Formal
Final.
Villain
Not in his own Power
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Politick
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Name
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Creation
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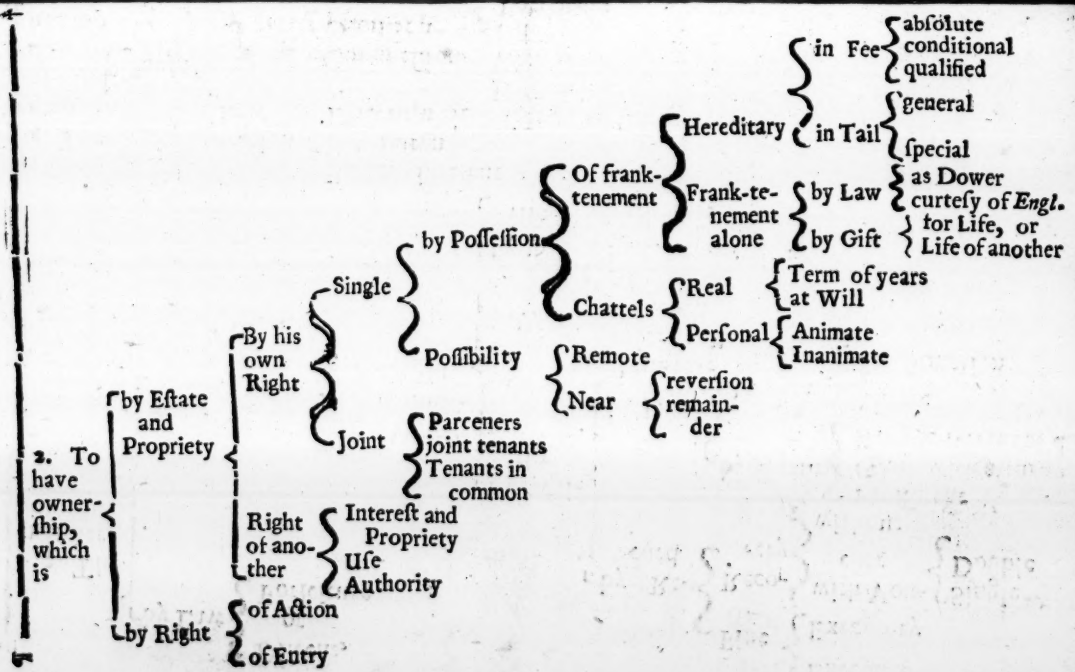
Corporate
Incorporate
Peculiar, which belongs to
the King
to the
according to his prerogative
Legal & ordinary
Regal & absolute
Subject
According to peculiar Custom of place
prescription of persons


2. To have ownership, which is
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Possibility
Parceners
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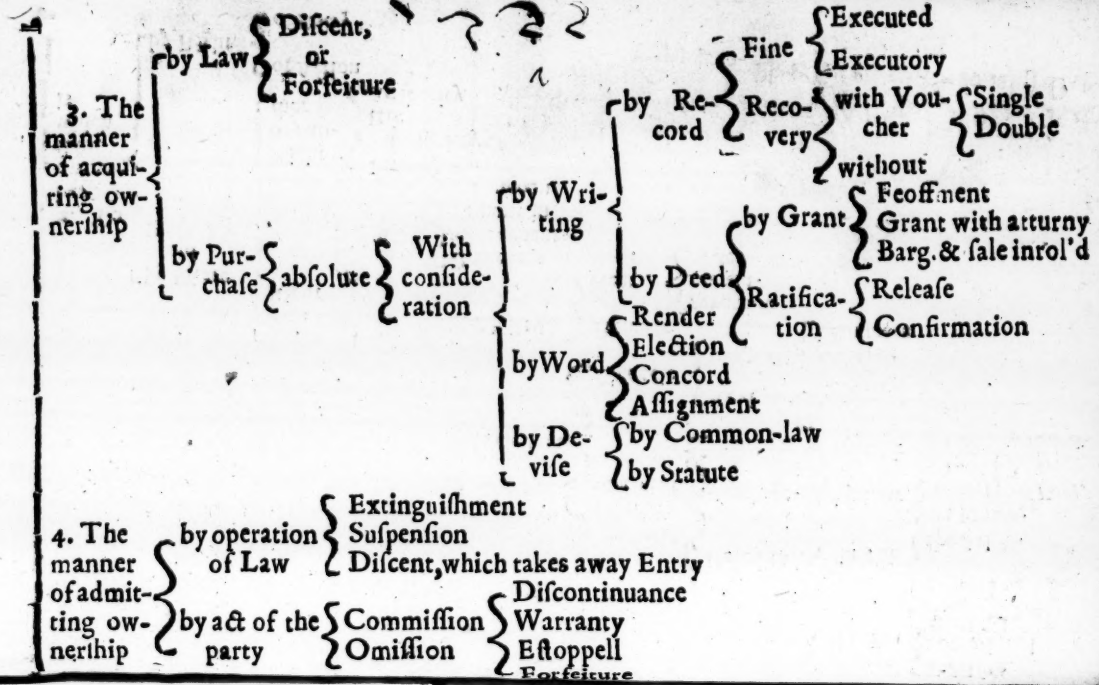
special
as Dower
curtesy of Engl.
for Life, or
Life of another
Term of years
at Will
Animate
Inanimate
reversion
remainder


3. The manner of acquiring ownerſhip
by Law
Diſcent, or Forfeiture
by Purchaſe
abſolute
With conſideration
by Writing
by Deed
by Record
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Executed
Executory
Recovery
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Single
Double
without
by Grant
Feoffment
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Commiſſion
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Warranty
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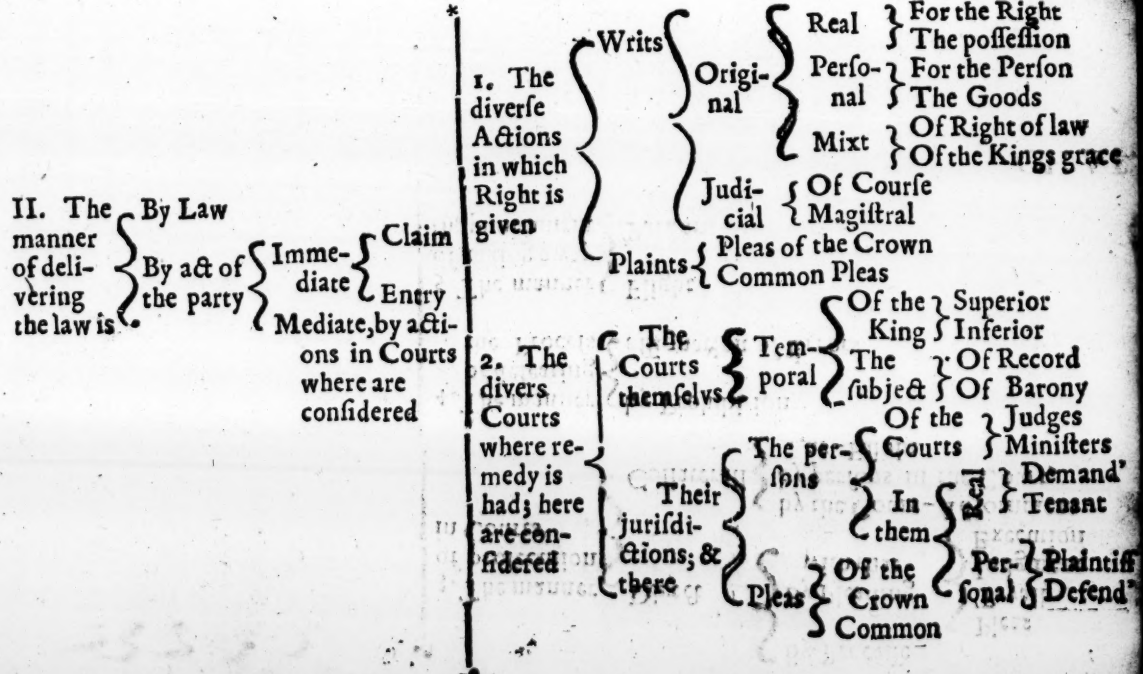
Forfeiture


II. The manner of delivering the law is
By Law
By act of the party
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Claim
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1. The diverse Actions in which Right is given
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Of Barony
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4. The manner of defeating the Process
- by Prohibition
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5. The manner of taking away the punishment
- Flight
- Pardon.

CHAP

CHAP. I.

The Laws of England *are threefold; Common Laws, Cuſtomes, and Statutes.*

The Common Law.

THE Common Law is grounded on the Rules of reaſon, and therefore we uſe to ſay in Argument, That reaſon will that ſuch a thing be done, or that reaſon will not that ſuch a thing be done; The rules of reaſon are of two ſorts, ſome taken from Learning, as well Divine as Humane, and ſome proper to it ſelf onely.

Of Theologie.

1.

Summa ratio eſt, qua pro Religione facit.

A Tenure to finde a Preacher, if the Lord purchaſe parcell of the Land, yet the whole ſervice remaineth, becauſe it is for the advancement of Religion.

2.

Dies Dominicus non eſt Juridicus.

Sale on a Sunday ſhall not be ſaid Sale in a Market, to alter the property of the Goods.

Of Grammer.

OF Grammer, the rules are infinite in the Etymologie of a Word, and in the conſtruction thereof; what is nature, is ſingle.

3.

Ad proxium antecedens fiat relatio, niſi impediatur Sententia.

As an inditement againſt *I. S.* ſervant to *I. D.* in the County of *Middleſex* Butcher, *&c.* is not good; for ſervant is no Addition, and Butcher ſhall be referred to *I. D.* which is the next Antecedent.

Of Logick.

4.

Ceſſante cauſa, ceſſat effectus.

THe Executor, nor the husband, after the death of a woman Guardian in ſoccage, ſhall not have the Wardſhip, becauſe (*viz.*) the natural affection is removed which was the cauſe thereof.

Some things ſhall be conſtrued according to the original cauſe thereof.

5.

The Executor may releaſe before the probate of the Will, becauſe his title and intereſt is by the Will, and not by the probate.

To

To make a man ſwear to bring me money upon pain of killing, and he bringeth it accordingly, it is felony.

Outlawry in Treſpaſs, is no forfeiture of Land, as outlawry in felony is; for although the non-appearance is the cauſe of the Outlawry in both, yet the force of the Outlawry ſhall be eſteemed according to the heynouſneſs of the offence, which is the principal cauſe of the Proceſs.

6.

According to the beginning thereof:

As if a Servant, which is out of his Maſters ſervice, kill his Maſter, through the malice which he bare him when he was his ſervant, this is petty Treaſon.

7.

According to the end thereof;

As if a man warned to anſwer a matter in a Writ, there he ſhall not anſwer to any other matter then is contained in the Writ; for that is the end of his coming.

8.

Derivativa poteſtas non poteſt eſſe majus primitiva.

A Servant ſhall be ſtopped to ſay the

Frank-Tenement is belonging to his Maſter, by a recovery againſt his Maſter, although the ſervant be a ſtranger to the Recovery; for he ſhall not be in better caſe then he is in, whoſe Right he claimeth, or juſtifieth.

9.

Quod ab initio non valet, in tractu temporis non convaleſcit.

If an Infant, or a married woman, do make a Will, and publiſh the ſame, and afterwards dyeth, being of full age, or ſole, notwithſtanding this Will is void.

10.

Vnumquodque diſſolvitur eo modo quo colligatur.

An Obligation or other matter in writing, may not be diſcharged by an agreement by word, but by writing.

11.

He that claimeth a thing on high, ſhall neither have gain, nor loſs thereby.

As if one Joynt-Tenant make a Leaſe of his Joyntee, reſerving rent, and die; the heire which ſurviveth ſhall have the reverſion of his Joyntee, but not the Rent, becauſe he cometh in by the firſt Feoffer, and not under his companion. Alſo

Alſo where the husband being leaſed for yeers in right, reſerving a Rent, the woman ſhall have the reſidue of the terme, but not the rent.

12.

Debile fundamentum, fallit opus.

When the eſtate whereunto the Warrantie is annexed is defeated, the Warrantie is alſo defeated.

13.

Incidents may not be ſevered.

As if a man grant Wood to be burnt in ſuch a houſe, wood may not be granted away, but he which hath the houſe, ſhall have the wood alſo.

14.

Actio perſonalis moritur cum perſona.

As if battery be done to a man, if he that did the battery, or the other die, the Action is gone.

If the Leaſor covenant to pay quit-rents, during the terme, his Executor ſhall not pay it, for it is a perſonal covenant.

15.

Things of higher nature, do determine things of lower nature.

As matters of writing do determine an agreement by words.

If an offence which is murder at the Common law, be made high Treaſon, no appeal lieth for it, for that the Murder is drowned, and puniſhable as Treaſon, whereof no appeal lieth.

16.

Majus continet minus.

Whereby the Cuſtom of a Manor, a man may demiſe for life, he may demiſe to his Wife, *durante viduitate.*

17.

Majus dignum trahit ad ſe minus dignum.

As the Writings, the Cheſt or Box they are in.

Of Philosophy.

18.

Natura vis maxima.

NAtural affection or brotherly love, are good cauſes or conſiderations to raiſe an uſe.

And one brother may maintain a ſuit for another.

19.

The law favoureth ſome perſons.

Viz.

Men out of the Realm, or in Piſon, Women

men married, Infants, Ideots, Mad-men, Men without intelligence, Strangers, that are neither parties, nor privie, and things done in anothers right.

A deſcent ſhall not take away the entry of a man out of the Realm, or in priſon, or of a married woman, or of an infant.

And a leaſe made to the husband and wife, after the death of the husband, the wife ſhall not be charged for waſte, during the mariage.

An Ideot ſhall not be compelled to plead by his Guardian or next friend, but ſhall be in the Court; and he that pleadeth the beſt plea for himſelf, ſhall be admitted.

If a dumb man bring an action, he ſhall plead by his next friend.

If a Leſſee for years grant a Rent-charge, and ſurrendereth, the rent ſhall be paid, during the terme, to the Stranger.

A man Out-lawed or Excommunicated, may bring an Action as an Executor.

20.

And a mans perſon before his poſſeſſions,

Mentioned of corporal pain, ſhall avoid a Deed, but not his Goods.

21.

And matter of poſſeſſion more then matter of right, when the right is equall.

As if a man purchaſe ſeveral lands at one time, held of ſeveral Lords by Knights ſervice, and dieth, the Lord which firſt ſeizeth the Ward, ſhall have it, otherwiſe his elder Lord.

22.

Matter of profit or intereſt ſhall be taken largely: and it may be aſſigned, and it may not be countermanded; but matter of pleaſure, truſt or authority, ſhall be taken ſtrictly, and may be countermanded.

As licence to him in my Park, or in my Garden to walk, extendeth onely to himſelf, and not to his ſervant, nor any other in his companie; for it is matter of pleaſure only; otherwiſe it is of a Licence to hunt, kill, and carry away the Deer, which is matter of profit.

A Church-way is matter of eaſe.

Of Politicall.

23.

NOthing ſhall be void, which by poſſibility may be good; If Land be given to a man, and to a woman married to another man,

man, and the heires of their two bodies, this is a preſent eſtate Tayle, becauſe of the poſſibilitie.

24.

Ex nudo pacto non oritur actio.

No man is bound to his promiſe, nor any uſe can be raiſed without good conſideration.

A conſideration muſt be ſome cauſe or occaſion which muſt amount to a recompence in Deed, or in Law, as money, or natural affection, not long acquaintance, nor great familiarity.

25.

The Law favoureth a thing that is of neceſſity.

As to pay ſeveral expences, ſhall not be ſaid to Adminiſter; to diſtrain in the night, dammage feaſant, to kill another to ſave his own life.

A ſervant to beat another to ſave his Maſter, if he cannot otherwiſe chooſe.

To drive another mans cattel amongſt mine own, untill I come to a place to ſhift them, is no Treſpaſs.

26.

And for the good of the Common-wealth.

As killing of Foxes, and the pulling down of an houſe of neceſſity to ſtay a fire.

27. *Com-*

27.

Communis error facit jus.

As an Acquittance made by a Major alone, where there be a hundred preſidents, is good.

28.

And things that are in the Cuſtody of the law.

Goods taken by Diſtreſs, ſhall not be taken in Execution for the debt of the owner thereof.

29.

The huſband and the wife are one perſon.

They cannot ſue one another, nor make any Grant one to another: And if a woman marry with her Obligor, the debt is extinct; and ſhe ſhall never have any action, if another were bound with him; for by the mariage the Action is ſuſpended; and an action perſonal ſuſpended againſt one, is a diſcharge to all.

30.

An Obligation with a condition to enfeoff a woman before ſuch a day, and before the day the Obligor taketh her to wife, the obligation is forfeited, becauſe he cannot infeoff her, but he may make a leaſe for years with a remainder to his wife.

When a joynt Purchaſe is, during the marriage, every one ſhall have the whole.

When

When a joynt purchaſe, during the mariage, is made, and the husband ſell; the wife ſhall have a *Cui in vitâ* for the whole againſt both, and on a feoffment made to one man and his wife, and to a third perſon, the third perſon ſhall have one moity.

31.

All that a Woman hath, appertaineth to her Huſband.

Perſonal things, and things abſolutely reall, as Lands, rents, and ſo forth, or Chattels reall, and things in Action, are onely in her right; notwithſtanding real things, and things in Action, he may diſpoſe at his pleaſure, but not Will or charge them; and he ſhall have her real Chattels, if he ſurvive. Of things in Action, the woman may diſpoſe by her laſt Will, and ſhe may make her husband her Executor, and he ſhall recover them to the uſe of the laſt will of his wife.

If a Leaſſee for years grant his terme to a man, or woman, and to another, they are joynt-Tenants; But if goods be given to her and to another, her husband and the other are Tenants in common.

The Husband may releaſe an Obligation, or treſpaſs for goods taken when his wife was ſole, and it ſhall be good againſt the woman

man if he die; but if he die without making any ſuch Releaſe, the woman ſhall have the Action, & not the Executor of her husband.

The woman ſurviving, ſhall have all things in Action; or her Executors, if ſhe die.

The Husband ſhall be charged with the debts of his wife but during her life.

32.

The will of the Wife, is ſubject to the will of her huſband.

Note, a Feoffment made to the wife, ſhe ſhall have nothing, if her husband do not thereunto agree.

Morall Rules.

33.

THe Law favoureth works of Charitie, right, and truth, and abhorreth fraud, coven and incertainties, which obſcure the truth; contrarieties, delayes, unneceſſary circumſtances, and ſuch like.

34.

Dolus & fraus una in parte ſanari debet.

No man ſhall take benefit of his own wrong; if a man be bound to appear at a day, and before the day the Obligee caſts him in priſon, the bond is void.

A

A Grant of all his woods in B. Acre, which may be reaſonably ſpared, is a void Grant, if it be not reſerved to a third perſon, to appoint what may be ſpared.

A Feoffment made in Fee of two Acres to two men, *Habend.* one acre to one, and the other acre to the other; this *Habend.* is void.

35.

Lex neminem cogit ad impoſſibilia, &c.

The Law compelleth no man to ſhew that which by intendment he doth not know; as if a ſervant be bound to ſerve his Maſter in all his commandements lawfull, it is a good Plea, to ſay, he ſerved him lawfully.

A Covenant to make a new Leaſe upon the Surrender of the old Leaſe, and after the Covenanter doth make a Leaſe by Fine, for more years to eſtrange, the Covenant is broken, although the Leſſee did not ſurrender, the which by the words ought to be the firſt Act, for that the other had diſabled to take, or to make.

Law Conſtructions.

THe Law expoundeth things with equity and moderation, to moderate the ſtrictneſs; it is no Treſpaſs to beat his Apprentice with

with a reaſonable correction, or to go with a woman to a Juſtice of Peace, to have the peace of her husband, againſt the will of her husband, which equity doth reſtrain the generality, if there be any miſchief or inconvenience in it; As if a man make a feoffment of his lands in, and with Common, in all his Lands in *C.* the Common ſhall be intended within his Lands in *C.* and not in his other Lands he ſhall have elſe-where.

36.

Every Act ſhall be taken moſt ſtrictly againſt him that made it.

As if two Tenats in Common, grant a Rent of 10. ſhillings, this is ſeveral, and the Grantees ſhall have 20. ſhillings: but if they make a Leaſe, and reſerve 10. ſhillings, they ſhall have onely 10. ſhillings between them:

So an obligation to pay 10. ſhillings at the feaſt of our Lord God; it is no Plea to ſay that he did pay it; but he muſt ſhow at what time, or elſe it will be taken he paid it after the feaſt.

37.

He that cannot have the effect of a thing, ſhall have the thing it ſelf.

Ut res magis valeat quam pereat.

As if a Termor grant his Terme, *Habendum*

dum immediat è poſt mortem ſuam; the Grantee ſhall have it preſently.

38.

When many joyn in one Act, the Law ſaith it is the Act of him that could beſt do it, and that thing ſhould be done by thoſe of beſt skill.

As the Diſſeizee, and the heir of the Diſſeizor, who is in by diſcent, joyn in a Feoffment; This ſhall be the Feoffment of the heire onely, and the confirmation of the Diſſeizee.

And the Merchant ſhall weigh the Wares, and not the Collectors.

39.

When two titles concur, the elder ſhall be preferred.

40.

By an acquittance for the laſt payment, all other Arrerages are diſcharged.

41.

One thing ſhall enure for another:

If the Leaſor enfeoff the Leſſee for life, it ſhall be taken for a confirmation.

42. *In*

42.

In one thing, all things following ſhall be concluded, in granting, demanding, or prohibiting.

If one except a Cloſe, or a Wood, the Law will give him a way to it.

43.

A man cannot qualifie his own Act.

As to releaſe an Obligation untill ſuch a time.

44.

The conſtruction of the Law may be altered by the ſpecial agreement of the parties.

If a houſe be blown down by the wind, the Leſſee is excuſed in waſte; but if he have covenanted to repair it, there an Action of Covenant doth lie by the agreement of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment, ſhall be taken to the intent of the parties; and common intendment is not ſuch an intendment as doth ſtand indifferent; but ſuch an intent as hath the moſt vehement preſumption. All incertaintie may be known by

by circumſtances, every deed being done to ſome purpoſe, reaſon would that it ſhould be conſtrued to ſome purpoſe, and variance ſhall be taken moſt beneficial for him to whom it is made, and at election.

46.

An intendment of the parties ſhall be ordered according to the Law.

If a man make a Leaſe to a man, and to his heires, for ten years, intending his heires ſhall have it, if he die, notwithſtanding the intent, the Executors ſhall have it.

47.

Qui per alium facit, per ſeipſum facere videtur.

A promiſe made to the Wife in conſideration of a thing to be performed by her Huſband, if he agree, and perform the Conſideration, in an Action of the caſe, he ſhall declare the aſſumption was made to him.

And if my ſervant ſell my goods to another in deqt I ſhall ſuppoſe, he bought them of me.

CUSTOMES.

Conſuetudo eſt altera lex.

CUſtomes are of two ſorts; General Cuſtomes in uſe throughout the whole Realme, called Maximes; and particular Cuſtomes uſed in ſome certain County, Citie, Towne, or Lordſhip, whereof ſome have been ſpecified before, and ſome follow here, and where occaſion is offered.

GENERAL CUSTOMES.

THe Kings Excellencie is ſo high in the Law, that no Freehold may be given to him, nor derived from him, but by matter of Record.

Every Maxim is a ſufficient authority to itſelf; and which is a Maxime, and which is not, ſhall alwayes be determined by the Judges, becauſe they are known to none but to the learned.

A Maxime ſhall be taken ſtrict.

A particular Cuſtom, except the ſame be a Record in ſome Court, ſhall be pleaded, and tryed by 12. men.

CHAP.

CHAP. II.

Statutes.

THe laſt ground of the Laws of *England* ſtandeth in divers Statutes made by our Soveraigne Lord the King, and his Progenitors, and by the Lords Spiritual, and Temporal, and the Commons in divers Parliaments, in ſuch caſes where the former Laws ſeemed not ſufficient to puniſh evill men, and to reward the good.

Of general Statutes the Judges will take notice if they be not pleaded, but not of ſpecial, or particular.

All Acts of Parliaments, as well private as general, ſhall be taken by reaſonable conſtruction, be collected out of the words of the Act only, according to the true intention and meaning of the maker.

Foure leſſons to be obſerved, where contrary Laws come in queſtion.

1. *The inferiour Law muſt give place to the ſuperiour.*
2. *The law General muſt yeild to the Law ſpecial.*
3. *Mans laws to Gods Laws.*
4. *An old law to a new law.*

And oftentimes all theſe laws muſt be joyned together to help a man to his right; as if a man diſſeized, and the diſſeizor made a Feoffment to defrand the plaintiff, in this caſe, it appears that the ſaid unlawfull entrie is prohibited by the law of Reaſon.

Bnt the Plaintiff ſhall recover double dammage, and that is by the Statute of 8 *Hen.* 6. And that the dammage ſhall be ſeſſed by 12. men, that is, by the cuſtome of the Realm, and ſo in ſome caſe, theſe three laws do maintain the Plaintiff's right.

And theſe laws concern either mens poſſeſſions, or the puniſhment of offences.

And ſo much ſhall be ſufficient to be ſaid touching common Law, Cuſtomes, and Statutes.

Concerning Possessions.

The difference between Poſſeſſion and Seizin, is,

Leaſe for years is poſſeſſed, and yet the Leſſor is ſtill ſeized; and therefore the termes of the Law are, that of Chattels a man is poſſeſſed; whereas in Feoffments, gifts in tayle, and Leaſes for life, he is called ſeized.

CHAP. III.

Of poſſeſſion of Frank-Tenement.

TEnant in Fee-ſimple, is he which hath Lands, or Tenements to hold to him and his heires for ever. It is the beſt Inheritance a man may have; He may ſell, or grant, or make his Will of thoſe Lands.

And if a man die, they do diſcend to his heire of the whole blood.

CHAP. IV.

FEE-TAYLE.

Fee-Tayle is, of what body he ſhall come that ſhall inherit.

Tenant in Tayle, is ſaid to be in two manners.

Tenant in Tayle General, and Tenant in Tayle Special.

GEneral Tayle is, where Lands or Tenements be given to a man, and his wife, and to the Heires of their two bodies, or to his heires males, or to his heires females.

Tenant in Tayle, is not puniſhable for waſte.

Tenant in Tayle cannot Will his Lands, nor bargain, ſell or grant, but for terme of his life, without a Fine, or Recovery.

If a man will purchaſe lands in Fee, it behoveth him to have theſe words, *Heires*, in his purchaſe.

If a man would grant Lands in Tayle, it behoveth him to appoint what body they ſhall come of.

Yet a deviſe of lands to a man and his heires males, is a good Intayle; and of lands to a man for ever, a good Free-Simple.

How Lands ſhall diſcend.

Inheritance is an eſtate which doth diſcend; it may not lineally aſcend from the ſon which purchaſeth in Fee, and dyeth, to his Father; but diſcendeth to his Uncle or Brother, and to his heires, which is the next of the whole blood, for the half blood ſhall not inherit: But the moſt worthy of Blood, as of the blood of the Father before the Mother; of the elder Brother before the other, and borne within eſpouſall.

A diſcent ſhall be intended to the heire of him

him which was laſt actually ſeized; That the Siſter of the whole blood, where the elder Brother did enter after the death of his Father, and not his Brother of the halfe blood, nor any other collaterall Coſen ſhall inherit; yet notwithſtanding ſuch a one is heire to a common Anceſter; in which Rule, every word is to be obſerved, and ſo in every Maxim, if the Land, Rent, Advowſon, or ſuch like do diſcend to the elder Son, and he die before any entry, or receit of the rent, or preſentment to the Church, the younger ſon ſhall have and inherit; and the reaſon is, becauſe that in all inheritances in poſſeſſion, he which claimeth title there unto as heire, ought to make himſelf heire to him that was laſt actually ſeized.

Here the poſſeſſion of the Leſſee for years, or of the Guardian, ſhall inveſt the actual poſſeſſion, and Frank-Tenement in the elder brother.

But he dying ſeized of a Reverſion, or a Remainder, or an eſtate for life, or in tayle; There he which claimeth the Reverſion, or Remainder as heire, ought to make himſelf heire to him that had the Gift, or made the purchaſe.

Feodo excludeth an eſtate tayle, where the ſecond ſon ſhall inherit before the daughter.

And if the Lands be once ſettled in the blood of the father, the heire of the mother ſhall never have them, becauſe they are not of the blood of him that was laſt ſeized.

And to the heire of the blood of the firſt Purchaſer;

As if the Father purchaſe Lands, and it diſcendeth to the ſon, who entreth, and dieth without heires of the Fathers part, then the Lands ſhall diſcend to the heires of the mother or father of the father, and not to the heires of the mother of the ſon; although they are more neer of blood to him that was laſt ſeized, yet they are not of the blood of the firſt Purchaſer.

If the heires be females in equal diſtance, as Daughters, Siſters, Aunts, and ſo forth, they ſhall inherit together, and are but one heire, and are called Parceners.

Gavill-kinde.

Doth diſcend to all the ſons, and if no ſons, to all the daughters: And may be given by Will by the Cuſtome.

CHAP.

CHAP. V.

PARCENERS.

Parceners are of two ſorts.

Women and their heires by the Common law. Men by the Cuſtom.

THey may have a Writ of Partition, and the Sheriff may go to the Lands, and by the oath of 12: men, make Partition between them, and the eldeſt ſhall have the Capitall Meſſuage by the Common Law, and the youngeſt by the Cuſtome; Where the parties will not ſhew to the Jewry the certaintie, there they ſhall be diſcharged in conſcience, if they make Partition of ſo much as is preſumed and known by preſumptions and likelyhoods.

Parceners may by agreement make partition by Deed, or by Word, and the eldeſt firſt chooſe, unleſs their agreement be to the contrary.

Every part at the time of the partition muſt be of an even yearly value, without incumbrance.

Rent may be reſerved for equality or Partition (and may be diſtrained for) without a Deed.

Parceners

Parceners by divers diſcents, before partition, being diſſeized, ſhall have one aſſize.

A Parcener before partition, may charge, or demiſed her part.

The entrie or Act of one Copartner, or joynt-Tenant ſhall be the Act of both; when it is for their good.

If a Parcener after Partition be entred, ſhe may enter upon her Siſters part, and hold it with her in Parcenary, and have a new Partition, if ſhe hold none of her part before ſhe was outed, *viz.* in exchange.

CHAP. VI.

JOYNT-TENANTS.

JOynt-Tenants be ſuch as have joynt eſtates in goods, or lands, where he that ſurviveth ſhal have all without incumbrance, if the Tenements abide in the ſame plight as they were granted.

Joynt-Tenants may have ſeveral eſtates;

A Joynt-Tenant cannot grant a Rent-charge, but for terme of his own life.

A Joynt-Tenant may make a Leaſe for life, or for years, of his part, or Releaſe, and the Leſſee for years may enter, although the Leſſor die before the Leaſe begin, and his heire

heire ſhall have the Rent, but the Survivor the Reverſion.

A Joynt-Tenant may have a Writ of Partition by the Statute of the 31. of *H.* 8. *cap.* 32. A Partition made by Joynt-Tenants, or Tenants in Common of Eſtates of Inheritance, muſt be by Indenture; by Word 'tis void.

CHAP. VII.

TENANTS in COMMON.

Tenants in Common, are thoſe that hold Lands and Tenements by ſeveral titles.

They may joyne in action perſonal, but they muſt have ſeveral actions Real.

They may have a Writ of Partition by the Stat. of 31. H. 8. cap. 32.

IF one Parcener, Joynt-Tenant, or Tenant in Common take, all the other have no Remedie, but by *Ejectione firme*, or ſuch like, or Waſte.

Gavil-kinde-Lands.

Tenant by the curteſie of *Kent*, whether he have Iſſue or no, untill he marry, and ſo forth, he may not commit Waſte.

CHAP.

CHAP. VIII.

TENANT in DOWER.

A Woman ſhall be indowed of all ſorts of inheritance of her husband, where the Iſſue that ſhe had by him may inherit, as heire to his father, by meetes, and bounds of a third part,

She ſhall have houſe-roome, and meat, and drink in common, for forty dayes; But ſhe may not kill a Bullock within thoſe 40. days after the death of her husband, in which time her Dower ought to be aſſigned her.

The Aſſignement by him that had the Frank-Tenement is good, but by him that is Guardian in Soccage, or Tenant by *Elegit*, *verte Elegit*, or Statutes, or Leſſee for years, is not.

She is to demand her Dower on the Land.

She ſhall recover dammages when her huſband dyed ſeized, from the death of her huſband; if the heire be not ready at the firſt day to aſſigne her Dower.

She ſhall have all her Chattels real againe, except her husband ſell them; he may not charge them, or give them by his Will; and likewiſe her bonds, if the money were due in the

the life of her husband, and all convenient apparel; but if she have more then is fit for her degree, it will be assets.

A woman shall be barred of her Dower so long as she detaineth the bodie of the heire, being Ward, or the Writing of the sons Land.

A woman shall not be endowed of any lands that her husband joyntly holdeth with another, at the time of his death.

Dower of Gavil-kind Lands.

If the woman shall be endowed of one half so long as she is unmarried, and chaste, and it may be held with the heire in Common.

It is of Lands and Tenements, and not of a Faire or such like; where the Heire loseth not his inheritance, there she loseth not her Dower.

Joynture.

IF a woman have a Joynture be fore marriage, she may claim no Dower, 27. *Hen.* 8.

If it be made during marriage, she may enter into her Joynture presently.

If she enter, or accept of it, she shall not be endowed.

If she shall be expulsed of any part of her Joyuture, she shall be endowed of the residue of her husbands Lands.

CHAP.

CHAP IX.

Tenant for terme of Life.

TEnant for terme of life, is he that hath Lands or Tenements for terme of his life, or another mans life, and none of leſſer eſtate may have a Free-hold.

If a Tenant for life ſowe the Lands and die before the corn be reaped; his Executor ſhall have it, but not the Graſſe, nor other fruit.

If a Tenant for life be impannelled upon an Inqueſt, and forfeit Iſſues and die, they ſhall be levied upon him in the Reverſion; and ſo likewiſe if the Husband, on the Lands of the Wife.

CHAP. X.

Tenant for Terme of yeares.

Tenant for terme of years, is where a man letteth lands or tenements to another for certain yeares.

HE may enter when he will, the death of the Leſſor is no let, and may grant away his terme before it begin; but before he enter, he cannot Surrender, nor have any action of treſpaſſe, nor take a releaſe.

He

He is bound to repaire the Tenements.

The Leſſor may enter to ſee what Reparations or Waſte there is, and he may diſtraine for his rent or have an action of debt.

If Tenant for life or years granteth a greater eſtate then he hath himſelfe, he doth forfeit his terme.

CHAP. XI

Tenant at Will.

Tenant at Will is hee that holdeth lands, or tenements at the Will of another.

He Leſſor may reſerve a yearely rent, and may diſtraine for it, or have an Action of debt; the Leſſee is not bound to repaire the Tenements.

The Will is determined by the death of the Leſſor, or of a woman Leſſee by her marriage, or when the Leſſee will take upon him to doe that which none but the Leſſor may doe lawfully, it determineth the Will and Poſſeſſion, and the Leſſor may have an action of Treſpaſſe for it.

The Leſſee ſhall have reaſonable time to have away his goods, and his corne; But he ſhall loſe his Fallow, and his dung carried forth.

CHAP.

CHAP. XII.

REMAINDER.

A Remainder is the reſidue of an eſtate at the ſame time appointed over, and muſt be grounded upon ſome particular eſtate given before, granted for years or for like, and ſo forth.

And ought to begin in poſſeſſion, when the particular eſtate endeth, there may bee no mean time between; either by Grant or Will.

No remainder can be of a Chattel perſonal; a Remainder cannot depend on a matter *ex poſt facto*, as upon Eſtate tayle, upon condition That if the Tenant in Tayle ſell, then the Land to remain to another, is a void Remainder.

CHAP. XIII.

REVERSION.

A Reverſion is the reſidue of an eſtate that is left after ſome particular eſtate, granted out in the Grantor; as if a man grant Lands for life, without further granting; the Reverſion of the Fee-ſimple is in the Leſſor.

CHAP

CHAP. XIV.

WASTE.

WASTE lieth against a Tenant by the curteſie, for life, for years, or in Dower, and they ſhall loſe the place waſted, and treble dammages.

Waſte lieth not againſt a Tenant by *Elegit*, Statute-Merchant, or Staple; but account after the debt or dammage levied.

Waſte, or account will lie againſt a Tenant in Mortgage, becauſe he had Fee conditionall.

Waſte is not given to the heire for Waſte in the life of his Father.

Waſte is given againſt the Aſſigne of the Tenant for life, or of anothers life, but not againſt the Aſſignee of a Tenant in Dower, or of the curteſie, it is to be brought againſt themſelves.

It is Waſte to pull up the formes, benches, doors, windowes, walls, Filbert-Trees, or Willows planted.

CHAP. XV.

DISCONTINUANCE.

DIscontinuance is where a man that hath the present possession, by making a larger estate then he may, diseseth the inheritance of the Lands or Tenements out of another, and dieth, and the other hath right to have them, but he may not enter, because of such alienation, but is put to his Writ.

If a man seized in the right of his Wife, or if a Tenant in Tayle made a Feoffment, and dieth, the Wife might not enter, nor the Issue in Tayle, nor he in Reversion, but are put to the Writ.

Now the wife may enter by the Statute, 32. *H.* 8. and a recovery suffered by the Tenant by curtesie, or by the Tenant after possibility of issue extinct, or for terme of life, is now made no discontinuance.

Such things that pass by way of a grant by deed without livery, and seizin, cannot be discontinued as a reversion, or Rent-charge Common, &c.

A Release or Confirmation without Warranty, maketh no discontinuance.

CHAP.

CHPP. XVI.

DISCENTS.

DIſcents which take away entries, is where a man diſſeizeth another, and dieth, and his heire entreth, or maketh a Feoffment to another in Fee, or in tayle, and he dieth, and his heire entreth; theſe diſcents put a man from his entrie.

A diſcent, during minority, marriage, *non ſane mentis*, impriſonment, or being out of the Realm, do not take away an entry.

Diſcents of Rents in groſs, the Lord notwithſtanding may diſtrain.

A dying ſeized of a terme for life, or of a Remainder, or Reverſion, doth not take away an Entrie, he muſt die ſeized in Fee, and Frank-Tenement.

A diſeizin cannot be to one joynt-Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a diſcent, the Donor, Feoffor, or his heires may enter.

A wrongfull diſeizin is no diſcent, unleſs the diſeiſor have quiet poſſeſſion five years without entrie, or claime, 32. *H.* 8.

CHAP. XVII.

CONTINUALL CLAIME.

COntinual Claime is a demand made by another of the propertie or poſſeſſion of a thing which he hath not in poſſeſſion, but is withholden from him wrongfully; defeateth a diſcent, happning within a year and a day after it is made, and now by the ſtatute within five years.

CHAP. XVIII

REMITTER.

REmitter is, when by a new title, the Frank-Tenement is caſt upon a man, whoſe entrie was taken away by a diſcent, or diſcontinuance, he ſhall be in by the elder title; as if Tenant in tayle diſcontinue the tayle, and after diſeizeth his continuance, and dieth thereof ſeized, and the land diſcend to his Iſſue, in that caſe he is ſaid to be in his Remitter, *viz.* ſeized his Ancient Eſtate tayle.

When the entrie of a man is lawful, and he taketh an eſtate to himſelf, when he is of full age, if it be not by Deed indented, or matter

f Record which ſhall eſtop him, it ſhall be to im a good Remitrer.

A Remitter to the Tenant ſhall be a Re-itter to him in the remainder, and rever ſion

CHAP. XIX.

TENURES.

ALL lands are holden of the King immediately, or of ſome other perſon, and therefore when any that hath Fee, dyeth without heire, the lands hall eſcheate to the Lord.

And they are holden for the moſt part ei-her by Knights ſervice, or in Soccage.

Knights Service draweth to it Ward, Mar-iage, and Relief, *viz.*

Of Ward, Marriage, and Relief.

THe heire male unmarried, ſhall be in Ward untill 21 years of age.

If he be married in the life of his Ance-ors, yet the Lord ſhall have the profit of the nd till his full age.

None ſhall be in Ward during the life of e Father.

If the heire refuſe a convenient marriage, he ſhall pay to the Lord the value, when he cometh to full age.

If the Ward marrie againſt the will of the Guardian, he ſhall pay him the double value of his Marriage; but if the heire be of the full age aforeſaid, he ſhall pay a relief.

A relief for a whole Knights Fee, is 5l. for half a Knights Fee 5 *s*. for a quarter 2*s*. 6*d*. for more, more; for leſs, leſs, accordingly.

A Relief is no ſervice, but is incident to Service, the Guardian muſt not commit Waſte, *viz*. Chattels.

Tenure in Soccage.

TEnure in Soccage is, where the Tenant holdeth of his Lord by fealty, ſuit of Court, and certain Rent for all manner of Service.

The Lord ſhall not have the Wardſhip, but a relief preſently after the death of his Tenant.

A Relief for Soccoge land, is a years rent and is to be paid preſently upon a diſcent or purchaſe. As if the Land were held by Fealty and 10*s*. Rent *per annum*, 5*s*. ſhall be paid for Relief.

The next of the kin to whom the inheri-

tance

tance may not diſcend, ſhall have the Ward-ſhip of the Land, and of the heire, untill his age of 14. years, to the uſe of the heire, at which age, the heire may call him to account.

If the Guardian die, the heire cannot have an Action of account againſt the Executor of the Guardian.

The Executor of the Guardian may not have the Wardſhip, but ſome other of the next of kin; the Husband may not alien the intereſt of the Wife, in the Guardianſhip, nor hold it; if ſhe die, it may not be ſold.

If another man occupie the Lands of the heire, as warden in Soccage, the heire may call him to account, as Guardian.

If the Guardian hold the Lands, after the heire is 14. the heire ſhall call him to account, as his Bailiff.

Gavill-kinde.

THe next of kin ſhall have the Guardian-ſhip of the body, and lands untill the heire be 15. years of age.

Diverſities of ages.

A man hath but two ages.

The full age of Male and Female is one and twenty.

A Woman hath ſix ages.

THe Lord her father may diſtrain for ayd for her marriage, when ſhe is ſeven. She is double at nine. She

She is able to assent to Matrimony at twelve.
She shal not be in Warde, if she be fourteen.
She shall go out of Ward at sixteen.
She may sell, or give her lands at 21.

No man may be sworn in any Jury, before he be 21, before which age, all gifts, grants, or deeds as do not effect by delivery of his own hands, are void, and all others voidable, except for necessary meat, drink, and apparrel, *&c.*

An infant may do any thing for his own advantage, as to be Executor, or such like; an Infant shall sue by his next friend, and answer by his Guardian.

Gavill-kind.

The heire may give or sell at fiftee years of age.

1. *The land must discend, not be given him by Will.*
2. *He must have full recompence.*
3. *It must be by Feoffment, and livery of seizin with his own hands, not by warrant of Attorney, nor any other conveyance.*

BY the Civil Law, an Infant may be Executor at 17. years of age.

An Infant may make a Will of his goods at 14. years of age, and a Maid at 12.

CHAP.

CHAP. XXI.

RENTS.

There are three manners of Rents.

Rent-Service.
Rent-Charge.
Rent-Seck.

RENT-Service is, where a man holdeth his lands of his Lord by certain Rent, and so forth.

Rent-Charge is granted, or reserved out of certain Lands by Deed, with a clause of distress.

Rent-Seck, is a Rent granted without a distress; or Rent-service, severed from other service, becometh a Rent-seck.

The Reversion of a Rent without a Deed, is void if the Reversion be not in the reservor; if a Rent be granted from the Reversion, it is a Rent-seck

He which is not seized of a Rent-seck, is without remedie for the same.

The gift of a peny by the Tenant, in name of seizin of a Rent-seck, is a good possession and seizin.

No Rent may be reserved upon any Feoffment, Gift, or Lease, but only to the Donor, and his heires, not to any stranger.

A Rent-charge is extinct by the Grantees purchaſe of parcell of the Land, but by the purchaſe of any of his Anceſters it ſhall not, it ſhall be apportioned like Rent-ſervice, according to the value of the land; but if the whole Land diſcend of the ſame inheritance, the rent is extinguiſhed.

By the grant of the Reverſion, the rents and Services paſs: If Rent be granted to a man without more; ſaying, he ſhall have it for terme of his life.

If the Lord accept of Rent or ſervice of the Feoffment, he excludeth himſelf of the Arrerages of the time of the Feoffment.

For a Rent-charge behind, one may have an Action of annuity, or diſtrain.

Diſtreſs.

For what, when, and where a man may diſtrain.

A man may diſtrain for a Rent-Charge, Rent-Service, Herriot-ſervice, and all manner of Service, as

Homage.
Eſcuage.
Fealtie.
Suite of Court.
And Relief, &c.

HErriot cuſtome muſt be ſeized: and for Amerciaments, in a Leete, upon whoſe ground

ground ſoever it be in the liberty; a man may not diſtrain for rent, after the Leaſe is ended, nor have debt upon a Leaſe for life, before the eſtate of Frank-Tenement be determined.

A man may not diſtrain in the night, but for dammage Feaſant.

A man may not diſtrain upon the poſſeſſions of the King, but the King may diſtrain of any Lands of his Grantee, or Patentee.

A man may not diſtrain the beaſts of a ſtranger that come by eſcape, untill they have been Levant, and Couchant on the ground, but for dammage Feaſans.

A man may not diſtrain the Oxen of the Plough, nor a Mil-ſtone, nor ſuch like that is for the good of the Common-wealth, nor a Cloke in a Taylors ſhop, nor victuals, nor corne in ſheafes, but if it be in a Cart, for dammage Feaſans.

A diſtreſs muſt be always of ſuch things as the Sheriff may make a Replevin.

A man may not ſever horſes joyned together, or to a cart.

If a man put cattell into a paſture for a week, and afterwards *I. N.* doth give him notice that he will keep them no longer, and the owner will not fetch them away; *I. N.* may diſtrain them dammage Feaſans.

If

If a man take beaſts dammage Feaſans, and driving them by the high way to a pound, the beaſts enter into the houſe of the owner, and the taker prayeth the delivery of them, and the owner will not deliver them: a Writ of Reſcous lyeth.

If a man diſtrain goods, he may put them where he will.

But if they periſh, he ſhall anſwer for them.

If cattell, they ought to be put in a common pound, or elſe in an open place, where the owner may lawfully come and feed them, and notice given to him thereof, and then if they die, it is in default of the owner.

Cattell taken dammage Feſans, may be impounded in the ſame land; but goods or Cattell taken for others things may not.

Sheep may not be deſtreined, if there be a ſufficient diſtreſs beſides.

No man ſhall drive a diſtreſs out of the County wherein it was taken.

No diſtreſs ſhall be driven forth of the hundred, but to a pound Overt within three miles.

A diſtreſs may not be impounded in ſeveral places, upon pain of five pounds, and treble dammage,

Fees for impounding one whole Diſtreſs, Foure pence.

The

The executor or adminiſtrator of him which had Rent or Fee-Farme in Fee, in Fee-tayle, or for life, may have debt againſt the Tenant that ſhould pay it, or diſtrain: and this is by the Statute 32. *H.* 8.

So may the husband after the death of his Wife, his Executor, or Adminiſtrator. So may he which hath Rent for another mans life, diſtrain for the arrerages after his death, or have an action of Debt, 32. *H.* 8.

But if the Landlord will diſtrain the goods, or cattell of his Tenant, and do ſell them, or worke them, or convert them to his own uſe, he ſhall be executor of his own wrong.

CHAP. XXIII.

Diſeizin of Rents.

Three cauſes of Diſeizin of Rents-Service.
Reſcous.
Replevin.
Incloſure.
Foure of Rent-Charge, Denyer, & Incloſure.
Foreſtalling is a Diſeizin of all.

FOreſtalling is, when the Tenant doth with force, and armes, way-lay, or threaten in ſuch manner, that the Lord dareth not diſtrain, or demand the Rent.

Denyall

Denyall is, if there be no diſtreſs on the Land, or if there be none ready to pay the Rent, &c.

And of ſuch diſeizins, a man may have an action of Novell diſeizin againſt the Tenant, and recover his Rent, and arrerages, and his dammage and coſts; and if the Rent be behind another time, he ſhall have a Rediſſeizin, and recover double dammage.

Reſcous, and Pound-breach.

IF the Lord diſtrain when there is no rent nor ſervice behind, the Tenant may not reſcue; otherwiſe if another diſtreine wrongfully; but no man may break the Pound, although he did tender amends before the cattell were impounded.

If the Lord come to diſtrain, and ſee the beaſts, and the ſervant drive them out of his fee, the Lord may not have Reſcous, becauſe he had not the Poſſeſſion, but he may follow them, and diſtrain, but not dammage feaſans.

CHAP. XXIV.

COMMON.

COMMON is the right that a man hath to put his beasts to pasture, or to use, and occupy ground that is another mans.

There be divers Commons, *viz.* Common in gross, Common appendant, Common appertinant, Common, because of neighbourhood, *viz.* the termes of Law.

The Lords of Wastes, Woods and pasture, may approve against their Tenants and neighbours with common appertenant, leaving them sufficient Common, and pasture to their Tenants.

As if one Tenant, surcharge the Common; the other Tenants may have against him a Writ *de admensuratione pastur æ*; But not against him that hath Common for beasts without number, neither may the Lord enclose from such Tenants: if he do, the Tenant may bring an assize against him, and recover Treble dammage, but the Lord may have a *quo jure*, and make the Tenant shew by what title he claimeth.

CHAP.

CHAP. XXV.

WAYES.

The Kings high-way is that which leadeth from village to village.

A common high-way is that which leadeth from a village into the fields.

A private way is that which leadeth from one certain place unto another, 3. Ed. 3.

IN the Kings high-way, the King hath onely paſſage for himſelf and his people; and the Frank-Tenement, and all the profits are in the Lord of the ſoyle, as they be preſented at the Leete.

Of a Common high-way, the Frank-Tenement and profits are to him that hath the land next thereto adjoyning, and if it be ſtopped, and I be damnified by it, I have no remedy, but by preſentment in the Leete.

If a private way be ſtraitned, or if a bridge there, which another ought to repair, be decayed, an action of the caſe lieth; But if the way be ſtopped, an Aſſize of Nuſance lieth, and the Leſſee may have it after the Leſſors years begin, or the Leſſee may have an action of the caſe: if the moſt part of a Water-Way, be ſtopped, an Aſſize will lie.

CHAP.

CHAP. XXVI.

LIBERTIES.

A Libertie is, a royall priviledge in the hands of a ſubject.

ALL Liberties are derived from the Crown, and therefore are extinguiſhed if they come to the Crown again by eſcheate, forfeiture, or ſuch like, for the Greater doth drowne the leſſer.

One may have Park, a Leete Wayfe, ſtray, wreck of Sea, and *tenura placitorum*, by preſcription, and without allowance in Eyre.

But not Cognizance of plea, nor *Cattalla fellonum, vel fugitivorum, aut ut ligatorum*

A libertie may be forfeited by miſuſing, as to keep a market otherwiſe then it is granted.

A libertie may be forfeited for not uſing, when it is for the good of the Commonwealth; as not to exerciſe the Office of the Clarke of the Market; but not to uſe a market, is not.

Whatſoever is in the King, by reaſon of his Prerogative, may not be granted, or pardoned by generall words, but by ſpeciall.

CHAP. XXVII.

Of Chattells Reall.

Chattells Reall, are Guardianſhips, Leaſes for years, or at Will, &c.

GUardianſhip is a Commodity of having the cuſtodie of the body, or lands, or both, where the heire is within age; and the Lord of whom the Land is holden, by Knights ſervice, ſhall have the ſame to his own uſe; for it is a Chattell Reall, and therefore his Executor ſhall have it.

The Guardian muſt not do waſte, nor infeoff, upon pain of loſing the Wardſhip. But he muſt maintain the buildings out of the Iſſues of the Lands, and ſo reſtore it to the heire.

If the Committee of the King commit, the Wardſhip ſhall be committed to another; if the Grantee, he ſhall loſe the Wardſhip.

And one of the friends of the Ward, being his next friend that will, may ſue for him.

If a Leaſe be made to a man and his heires for 20. years, it is a Chattell, and his Executor ſhall have it; otherwiſe if a man Will a Leaſe to a man and his heires, here the word Heires,

Heires, are words of purchaſe, and his heires ſhall have it.

If a man grant, *Proximam advocationem* to *I. S.* and his heires, it is but a Chattell, for it is but for *unicâ vice.*

Writings pawned for money lent, are Chattells.

If a woman have execution of Lands by Statute-Merchant, and taketh a husband, he may grant it, for it is a chattell.

Of Chattells Perſonall.

CHattells Perſonall, are Gold, Silver, Plate, Jewels, Utenſils, Beaſts, and other Chattells, and moveable Goods whatſoever; Obligations, and Corne upon the ground.

All goods, as well moveable, as unmoveable, Corne upon the ground, Obligations, right of Actions, money out of bags, and corn out of ſacks, *Sunt Cattalla.*

Money is not to be paſſed by the grant of all his goods, and Chattells; nor Hawkes, nor Hounds, nor other things; *feræ naturæ*, for the propertie is not in any, not after they are made tame, longer then they are in his Poſſeſſion; as my Hounds following me, or my man, or my Hawke flying after a foule, or my Deer haunting out of my Park. But if

they stray of their own accord, it is lawfull for any man to take, and the heire shall have them.

All Chatteils shall go to the Executors; Fatts, and Furnaces, fixed in a Brew house, or Dy-house by the Lessee; if they be fixed by Tenant in Fee, the heire shall have them.

Now something hath been said concerning Possessions, it followeth, that it be shewed, how they may be conveyed from one man to another.

CHAP. XXVIII.

Of Conveyances.

In every Conveyance, there must be a Grantor, and a Grantee, and something granted. The Conveyance of some persons is void, of others voidable.

Conveyance of a Woman Covert is void, without the consent of her husband, and it ought to be made in her and his name, except it be done as Executor to another.

Of an Infant, that which doth not take effect with the delivery of his own hands, is void, and an Action of Trespass will lie against him, for taking the things given.

Otherwise

Otherwise it is but voidable, except it be as Executor, or for necessary meat, and drink, &c. for his advantage.

Voidable. { Of *non sane memorie*, or made by *duresse*, } Royall.

VOydable by the parties themselves, and their heires, and by them that shall have their estates, except *Non sane* himself.

Grants by Fine.

VOydable by Writ of Error, by an Infant during his nonage, and by the Husband for a Fine levied by his Wife alone, during their marriage.

Conveyance of some persons cannot be good for ever, without the consent of others, as the Deane without the Chapter, the Major without the Commonaltie, and of other bodies politick, that have a common Seale, or of a Parson without the Patron and Ordinary.

If there be no condition in the Conveyance, it shall be intended the elder.

A Conveyance made to a feme Covert, shall be good, and of effect, untill her husband do disagree.

An Infant may be Grantee, so may a Woman Outlawed, a Villaine, a Bastard, and a Fellon.

A Baſtard can have no heire, but the Iſſue of his body lawfully begotten.

An Infant at the age of diſcretion, by his actuall entry; and a woman againſt the will of her husband may be a diſſeiſor, or a Treſpaſſor.

In all conveyances there muſt be one named, which may take by force the grant, at the beginning of the grant.

A grant made to the right heires of one that is dead, is good, or *Cuſtodibus Eccle.* is good for goods.

All Chattells, reall or perſonall, may be granted, or given without a Deed.

Rent-ſervice, Rent-ſeck, Rent-charge, Common of Paſture, or of Turbarie, Reverſion, Remainder, advowſon, or other things which lieth not in manuall occupation, may not be conveyed for years, for life, in tayle, or in Fee, without writing.

The Major, or Commonalty, or ſuch like, cannot make a Leaſe for years, without Deed.

CHAP.

CHAP. XXIX.

OF DEEDS.

Three things needfull, and pertaining to every Deed; Writing, Sealing, and delivering.

IN the Writing muſt be ſhewed the perſons names, their dwelling place, and degree. The things granted, upon what conſideration, the eſtate, whether abſolute, or conditionall, with the other circumſtances, and the time when it was done.

No grant can be made, but to him that was partie to the Deed; except it be by way of Remainder.

The words muſt be ſufficient in Law to bind the parties; as if a man grant *omnes terras certa ſua*, a Leaſe for years paſſeth not, but for Frank-Tenement, at leaſt, *nec per omnia bona ſua.*

Exceptio ſemper ultimo ponenda eſt:

THe *Habendum* muſt include the premiſſes:

A Condition cannot be reſerved, but by the Grantor, and it is proper to follow the *Habend.* preſently.

The *Habendum*, or Condition muſt not be

Repugnant

Repugnant to the Premiſes, if it be, it is void, and the Deed will take effect by the Premiſes.

A Warrant is good, although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffors.

If it be raſed, or interlined in the Date, or in any materiall place, it is very ſuſpitious.

Of Sealing.

A Writing cannot be ſaid to be a Deed, if it be not ſealed, although it be written, and delivered, it is but an Eſcrowe.

And if it were ſufficiently ſealed, yet if the Print of the ſeale be utterly defaced the Deed is unſufficient; it is not my Deed.

It may not be pleaded, but it may be given in Evidence.

Of Delivery.

A Deed taketh effect by the delivery, and if the firſt take any effect, the ſecond is void.

A Jurie ſhall be charged, to enquire of the delivery, but not of the date, yet every Deed ſhall be intended to be made, when it doth beare date.

Diverſitie

Diversitie in delivering of a WRITING.

As a Deed.

As Escrow.

THis Delivery ought to be done by the partie himself, or by his sufficient Attourney, and so it shall binde him, whosoever wrote, or sealed the same.

If one be bound to make assurance, he need not to deliver it, unless there be one to read it to him before.

And if any writing be read in any other forme to a man unlearned; It shall not be his Deed, although he Seale and deliver it.

There are two sorts of Deeds.

A Deed Poll, which is the Deed of the Grantor; a Deed indented, which is the mutuall Deed of either parties; but in Law, one is the Deed of the Grantor, and the other the counter-partie, and if any variance be in them, it shall be taken as it is in the Deed of the Grantor; and if the Grantor Seale only, it is good.

CHAP.

CHPP. XXX.

BARGAINS and SALES.

NO Mannor-lands, Tenements, or other hereditaments can paſs, alter, or change, from one man to another, whereby an eſtate of Inheritance or Free-hold is made, or taketh effect in any perſon or perſons, or any uſe thereof is made, by reaſon only of any Bargain and Sale therefore, except the ſame be made by writing indented, ſealed, and inrolled in one of the Courts of Record at *Weſtminſter*, or within the ſame Court or Countie where the Tenements ſo bargained, do lie, before the *Cuſtos Rotulorum*, and two Juſtices of Peace, and the Clerk of the Peace, or two of them, whereof the Clerk of the Peace to be one, and that within ſix months after the date of ſuch writing indented, 27, *H.* 8.

The inrollment ſhall be indented the firſt day of the Terme, and ſhall have relation to the delivery of the Deed, againſt all ſtrangers.

CHAP. XXXI.

FEOFFMENTS.

A Feoffment, is an estate made by delivery of Possession, and seizin by the party, or his sufficient Attorney.

A man cannot make livery of seizin, before he have the Possession.

A Joynt-Tenant cannot enfeoffe his Companion.

A Co-partner make a Feoffment of his part, or release.

A man cannot enfeoffe his Wife.

A Disseizor cannot enfeoffe the Disseizee; for his entrie is lawfull upon the disseizor.

Such persons as have possession in lands for yeers, or for life, &c. cannot take by livery and seizin of the same Lands.

IF a Feoffment be made, and the Lessee for years give leave to the Lessor to make Livery and seizin of the Premisses, saving to himself his Lease, *&c.* and he doth, the terme is not surrendred; for the Lessee had an Interest which could not be surrendred without his consent to surrender, & here his intent to surrender doth not appear; wherefore he may enter, & have his term & the rent is renewed,

renewed, but it is otherwise with a Lessee for life, and the rent is extinct.

The Lessor cannot make Livery and seizin against the Will of the Lessee being on the Land; But he may grant the Reversion, and if the Lessee do Attorn, the Free-hold will pass without Livery of seizin.

Livery of Seizin.

LIvery of seizin, is a Ceremonie used in Conveyance of Lands, that the Common people might know of the passing, or alteration of the estate: it is requisite in all Feoffments, gifts in the tayle, and Leases for life, made by deed, or without deed.

No Free-hold will pass without Liverie of seizin, except by way of surrender, Partition, or exchange, or by matter of Record, or by Testament.

Livery of seizin must be made in the lifetime of him that made the estate.

Dona clandestina sunt semper suspitiosa.

BY Livery of seizin in one County, the Lands in another County will not pass.

Livery within view, is good, if the Feoffee do

do enter in the life-time of the Feoffor.

Livery may not be made of an eſtate to begin in *Futuro*, for no eſtate in Frank-Tenement may be given in *Futuro*, but ſhall take effect preſently, by Livery and Seizin.

Of Uſes.

THe Statute of 27. *H.* 8. hath advanced uſes, and hath eſtabliſhed ſuretie for him that hath the Uſe againſt his Feoffees; for before the Statute, the Feoffees were owners of the Land, but now it is deſtroyed, and the *ceſtuy*; Uſe is owner of the ſame; before the poſſeſſion ruled the Uſe, but ſince the Uſe governeth the poſſeſſion, Indentures ſubſequent be ſufficient to direct the Uſes of a Fine or Recovery precedent, when no other certain and full declaration was made before.

Attorney.

AN Attorney ought to do every thing in the name, and as the act of him which gave him the authority; as Leaſes in name of the Leſſor, but he muſt ſay, by vertue of his Letter of Attorney, I do deliver you poſſeſſion and ſeizin of, &c. for, &c.

An Attorney muſt firſt take poſſeſſion before he can make Livery of Seizin.

If an Attorney do make Livery of Seizin; otherwiſe

otherwiſe then he hath warrant, then it is a diſeizin to the Feoffor.

An Attorney muſt be made by writing ſealed, and not by word.

CHAP. XXXII.

EXCHANGE.

In Exchange, both the eſtates muſt be equall, there muſt be two Grants; & in every grant, mention muſt be made of this word exchange. It may be done without Livery of Seizin, if it be in one Shire, or elſe it muſt be done by Indenture, and by this word Exchange, or elſe nothing paſſeth without livery.

EXCHANGE, importeth in the Law a Condition of Re-entry, and a Warranty voucher, and recompence of the other land that was given in Exchange; an Aſſignee cannot re-enter, nor vouch, but Rebate; Exchanger may re-enter upon an Aſſignee. And the ſame condition defeated in part, is defeated in the whole, and the ſame law is in partition.

CHAP. XXXIII.

GRANTS.

GRants muſt be certain. A Grant to *I. S.* or *I. N.* is void for the incertaintie, although it be delivered to *I. S.* The deli-

very

very of the Deed will not make a void Grant good, or to take effect.

The Lord cannot Grant the Wardſhip of his living Tenant, becauſe of the uncertainty who ſhall be his heire, unleſs he name ſome perſon.

When any thing is granted that is not certain, as one of my horſes, then the choice is in the Grantee.

When ſeveral things are granted, then it is in the choice of him that is to do the firſt Act.

A man cannot grant, nor charge that which he never had.

A man may charge a Reverſion.

A Parſon may grant his tythes, or the Wool of his Sheep for years.

A thing in action, a cauſe of a ſuite, right of entrie, or a Title for a condition broken, or ſuch like, may not be given or granted to a Stranger; But only to the Tenant of the ground, or to him that hath the Reverſion, or Remainder.

A thing that cannot begin without a Deed, may not be granted without a Deed; as a Rent-Charge, Fayer, *&c.* Every thing that is not given by delivery of hands, muſt be paſſed by Deed; the right of a thing reall or perſonall,

ſonall, may not be given in, nor releaſed by Word; a Rent of condition, or a re-entrie may not be reſerved to one that is not partie to the Deed.

All things that are incident to others, paſs by the grant of them that they are incident unto.

A man by his Grant, cannot prejudice him that hath an elder title.

If no eſtate be expreſſed in the Grant, and Livery and ſeizin be made, then the Grantee hath but eſtate or life; But if there be ſuch Words in the Grant, which will manifeſt the Will of the Granter, ſo his will be not againſt the law, the eſtate ſhall be taken according to his intent and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome purpoſe, and therefore reaſon would they ſhould be conſtrued to ſome purpoſe.

All Grants ſhall be taken moſt ſtrong againſt him that made it, and moſt beneficiall to him to whom it is made.

To Grants of Reverſion, or of Rents, *&c.* there muſt be Attornment, otherwiſe nothing paſſeth, if it be not by matter of Record.

ATtornment is the agreement of the Tenant to the Grant, by writing, or by Word; as to ſay, I do agree to the Grant made to you, or I am well contented with it, or I do Attorne unto you, or I do become your Tenant, or I do deliver unto the Grantee a peny, by way of ſeizin of a Rent, or pay, or do but one ſervice onely in the name of the whole; it is good for all.

It muſt be done in the life-time of the Grantor.

Without Attornment, a Signiory, a Rent-charge, a Remainder, or a Reverſion, will not paſs, but by matter of Record.

Without Attornment, ſervices paſs not by the ſale of the Manor, nor from the Manor, but by bargain and ſale inrolled.

Attornment muſt be made by the Tenant of the Free-hold, when a Rent-charge is granted.

By the Attornment of the Termor to the Grantee of a Reverſion, with Liverie, and the Rent alſo, though no mention be made thereof; before attornment a man may not diſtrain, nor have an action of waſte.

By fine, the Lord may have the Wardſhip of the body, and Lands before the attornment of his Tenant.

The end of attornment, is to perfect

Grant, and therefore may not be made upon condition, or for a time.

A Tenant that is to perfect a Grant by Attornment, cannot consent for a time, nor upon a Condition, nor for part of a thing granted: But it shall enure the whole absolutely.

If the Tenant have true notice of all the Grant, then such Attornment is void.

Attornment necessary upon a Devise.

CHAP. XXXIV.

LEASES.

A Lease for years must be for a time certaine, and ought to express the terme, and when it should begin, and when it should end certainly; And therefore a Lease for a year, and so from year to year, during the life of *I.S.* but for two years, it may be made by Word or Writing; If a Lease to *I. N.* to hold untill a hundred pounds be paid, and make no livery of seizin, he hath estate only at Will.

A Lease from year to year, so long as both the parties please, after entrie in any year, it is a Lease for that year, *&c.* till warning be given to depart. 14. *H.* 8. 16.

A Lease beginning from henceforth, shall be accounted from the day of the delivery

from

from the making, ſhall be taken inclusive from the day of the making; or of the date excluſive.

If Lands diſcend to the heires before his entrie, he may make a Leaſe thereof.

A man lets a houſe, *cum pertinent*, no lands paſs; but if a man let a houſe, *cum omnibus terris eidem pertinent*, there the lands thereunto uſed paſs.

If a man lets Lands, wherein is Coale-mines, quarries, and ſuch like, if they have bin uſed, the Tenant may uſe them. if they be not open, if the Tenant for them, imploy them not on the Land, it is waſte, likewiſe marle; the land is the place where the Rent is to be paid and demanded; if no other place between the parties be limited.

Treſpaſs is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let lands without impeachment of Waſte, and a Stranger cut down the trees, and the Leſſee doth bring an action of Treſpaſs, he ſhall not recover for the value of the Trees, but for the Crop, and burſting of his cloſe, and the heire of the Leſſor ſhal have ſuch trees, and not the Executor of the Leſſee, unleſs they be cut by the Leſſee, and enjoyed by the Grantee, without Waſte.

Lessee for years, or for life, Tenant in Dower, or by the curtesie, or Tenant in tayle after possibility, *&c.* have onely a speciall interest or property in the trees, being upon the ground, growing as a thing annexed unto the Land, so long as they are annexed thereunto.

But if the Lessee, or any other sever them from the Land, the property and interest of the Lessee in them, is determined; and the Lessor may take them, as things that are parcell of his Inheritance, the interest of the Lessee being determined.

To accept the rent of a void Lease; will not make the Lease good; But avoidable it will.

If the Husband and Wife do purchase Lands to them and the heires of the Husband, and he make a Lease, and die; his Wife may enter, and avoid the Lease for her life, but if she die, leaving the husband, who afterward dies, before the terme ends, the Lease is good to the Lessee, against the heire.

Where it is Covenanted and granted to *S.* that he shall have five Acres of land in *D.* for years, this is a good Lease, for *concessit* is of such force as *dimisit*.

If a man make a Lease for 10 years, and afterwards maketh another lease for 21 years, the latter shall be a good Lease for eleven years, when the first is expired.

If the Lessee at his cost, do put glass in the Windowes, he may not take the same away again, but he shall be punished for Waste; and so of Wainscot, and seeling, if it be not fixed with Screwes.

Tenant in tayle may make a lease for such lands or inheritance, as have been commonly letten to farm if the old lease be expired, surrendred or ended, within one year after the making of the new, But not without impeachment of Waste, nor above 21 years, or three lives, from the day of the making, reserving the old Rent, or more. 32. *H.* 8. By Indenture of Lease, by Tenant in tayle, for 21 years, made according to the forme of the Statute, rendring the ancient, or more Rent. If the Tenant in tayle die, it is a good lease against his Issue; But if a Tenant in tayle die without Issue, the Doner may avoid this Lease by entrie. 32. *H.* 8. 28. And if he in the Remainder, do accept the Rent, it shall not tie him, for that the Tayle is determined, the Lease is determined and void. *Ed.* 6. 19.

The Husband may make such a Lease of his wifes lands by Indenture, in the name of the husband and wife and she to seale thereunto, and the rent must be reserved to the husband and his wife, and to the heires of the wife, according to her estate of Inheritance.

A Lease made by the husband alone, of the Lands of his wife, is void after his death; But the Lessee shall have his Corne.

By the husband and wife, voidable, if it be not made as aforesaid.

If a man do let Lands for years, or for life, reserving a Rent, and do enter into any part thereof, and take the profit thereof, the whole Rent is extinguished, and shall be suspended, during his holding thereof.

The acceptation of a re-demise, to begin presently, is suspension of the Rent, before any entrie; otherwise of a re-demise to begin *in futuro*.

Reservations and Exceptions.

THere are divers words, by which a man may reserve a Rent, and such like, which he had not before, or to keep that which he had, as *Tenendum, reservandum, solvendum, faciendum*, it must be out of a Messuage, and where a distresse may be taken; and not out of a Rent: and it must be comprehended within the purport of the same Word.

Exceptions of past ought always to be of such things which the Grantor had in possession at the time of the Grant.

The heire shall not have that which is reserved

ſerved, if it be not reſerved to him by ſpeciall words.

If a man make a Feoffment of Lands, and reſerve any part of the profits thereof, as the graſs, or the Wood, that reſervation is void, becauſe it is repugnant to the feoffment.

A man by a Feoffment, Releaſe, Confirmation, or Fine, may grant all his right in the Land, ſaving unto him his Rent-charge, *&c.*

Things that are given only by taking and uſeing: As paſture for four gullocks, or two loads of Wood, cannot be reſerved but by way of Indenture, and then they ſhall take effect by way of Grant, of the Grantor, during his life and no longer, without ſpeciall Words.

Exceptions of things, as Wood, Myne, Quarrie, Marle, or ſuch like, if they be uſed, it is implied by the Law that they ſhall be uſed; and the things without which they cannot be had, is implied to be excepted, although no, *&c.*

But otherwiſe, if they be not uſed, then the way and ſuch like muſt be excepted.

An Aſſignee may be made of Lands given in Fee, or for life, or for years, or of a Rent-charge, although no mention be made of the Aſſignee in the Grant.

But otherwiſe it is of a promiſe, Covenant, or Grant, or Warranty. If

If a Lessee do assigne over his terme, the Lessor may charge the Lessee, or assigne at is pleasure.

But if the Lessor accept of the Rent of the Assignee, knowing of the assignement, he hath determined his acception, and shall not have an action of debt against the Lessee, for Rent due after the assignement.

If after the assignement of the Lessee, the Lessor do grant away his Reversion, the Grantee may not have an action of debt against the Lessee.

If a Lessee do assigne over his interest, and die, his Executor shall not be charged for rent due after his death.

If the Executor of a Lessee do assigne over his interest, an action of debt doth not lie against him for rent due after the assignement.

If the Lessor enter for a condition broken, or the Lessee do surrender, or the terme end, the Lessor may have an action of debt for the arrearages.

A Leafe for years, vending rent, with a condition, that if the Lessee assigneth his terme, the Lessor may re-enter. The Lessee assigneth, the Lessor receiveth the Rent of the hands of the assignee, not knowing of the assignement, it shall not exclude the Lessor of his entrie.

A

A thing in a Condition may be aſſigned over for good cauſe, as juſt debt: as whereas a man is indebted unto me 20. pounds, and another do owe him 20. pounds, he may aſſigne over his Obligation unto me, in ſatisfaction of my debt, and I may juſtifie the ſuing for the ſame, in the name of the other, at my own proper coſts and charges.

Alſo where one hath brought an action of debt againſt *I. N.* which promiſeth me, that if I will aide him againſt *I. N.* I ſhal be paid out of the ſum, in demand I may aid him.

An aſſignee of Lands, if he be not named in the condition, yet he may pay the money to ſave his Land.

But he ſhall receive none, if he be not named; the tender ſhall be to the Executor of the Peoffees.

Aſſignee ſhall alwayes be intended, he that hath the whole eſtate of the aſſignor, that is aſſignable; a Condition is not aſſignable, and not of an Executor, or Adminiſtrator: if there be ſuch an aſſignee, the law will not allow an aſſignee in the law, if there be an aſſignee indeed; ſo long as any part of the eſtate remaineth to the aſſignor, the tender ought to be made to him or his heires, it ſerveth; yet a colourable payment to the heire, ſhall not veſte the eſtate out of the aſſignee, as a true payment will, *viz.* Covenant.

CHAP.

CHAP. XXXVI.

SURRENDERS.

A Surrender is an Inſtrument teſtifying with apt words, that the particular Tenant of Lands, or Tenements for life, or years, doth ſufficiently conſent, that he which hath the next immediate Remainder, or Reverſion thereof, ſhall alſo have the particular eſtate of the ſame in poſſeſſion; and that he yeildeth, or giveth the ſame to him for ever; Surrender ought forthwith to give a preſent poſſeſſion of the thing Surrendred unto him which hath ſuch an eſtate, where it may be drowned.

A Joynt-Tenant cannot ſurrender to his fellow.

Eſtating of things that may not be granted without a Deed, may be determined by the Surrender of the Deed to the Tenant of the Land.

Leaſe for years cannot ſurrender before his Term begin; he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners;

In *Deed.*

In *Law.*

A Surrender in Law, is when the Leſſee for years, doth take a new Leaſe for more years.

A Surrender in Deed, muſt have ſufficient words to prove the aſſent, and will of the Surrenderer to Surrender; and that the other do alſo thereunto agree.

The husband may Surrender his Wifes Dower for his life, and her Leaſe for ever.

By Deed Indented, a man may Surrender upon condition.

CHAP. XXXVII.

RELEASES.

A Releaſe is the giving or diſcharging of a Right, or Action which a man hath or claimeth againſt another, or out of, or in his lands.

A Releaſe or Confirmation made by him that at the time of the making thereof had no right, is void; if a right come to him afterwards, unleſs it be with warranty, and then it ſhall barr him of all right that ſhall come to him after the warranty made.

Releaſe,

Releaſe, or confirmation made to him that at the time of the Releaſe, or Confirmation made, had nothing in the Lands, is void, it behoveth him to have a Free-hold or a poſſeſſion and privitie.

A Releaſe made to a Leſſee for years, before his entrie, is void.

A man may not releaſe upon a Condition, nor for a time, nor for part; But either the Condition is void, and the time is void, and the Releaſe ſhall enure to the partie to whom it is made for ever, for the whole, by way of extinguiſhment: But a man may deliver a Releaſe to another, as an Eſcrowe, to deliver to *I. S.* as his Act and Deed if *I. S.* do perform ſuch a thing, or Releaſe upon a condition by Deed indented, may be good.

A Joynt-tenant or a Rent-charge, may releaſe, yet all the Rent is not extinct, nor yet if he purchaſe the lands, his fellow ſhall have the Rent ſtill.

If the grantee releaſe parcell of a Rent-charge to the Grantor, yet all the Rent is not extinct.

A Releaſe to charge an eſtate, ought to have theſe words, Heires, or words to ſhew what eſtate he ſhall have.

A releaſe made to him that hath a Reverſion, or a remainder in Deed, ſhall ſerve and help

help him that hath the Frank-tenement; So shall a Releaſe made to a Tenant for life, or a Tenant in Tayle, inure to him in the Reverſion, or Remainder, if they may ſhew it, and ſo to Treſpaſſors and Feoffees, but not to Diſſeiſors.

A Releaſe of all manner of Actions doth not take away an entrie, nor the taking of ones Goods againe, nor is any Plea againſt an Execution.

A Releaſe of all demands, extinguiſheth all Actions Reall and Perſonall, appeales, Executions, Rent-charge, Common of Paſture, Rent-Service, and all right, and ſeizure, and all right in Lands, and propertie in Chattels: But not a poſſibility, or future duty, as a Rent payable after my death, and ſuch like.

CHAP. XXXVIII.

CONFIRMATION.

Confirmation, is When one ratifieth the poſſeſſion, as by Deed to make his poſſeſſion perfect; or to diſcharge his eſtate, that may be defeated by anothers entrie.

AS if a Tenant for life, will grant a Rent-charge in Fee, then he in the Reverſion may confirme the ſame Grant.

Whereas

Whereas a man by his entrie, may defeat an eſtate; there by his Deed of Confirmation, he may make the eſtate good.

A Confirmation cannot charge an eſtate that is determined by expreſs Condition, or limitation; To confirm an eſtate for an houre, if it be for Tenant for life, it is good for life; if to Tenant in Fee, for ever.

A leaſe for years may be confirmed for a time, or upon condition, or for a piece of the Land; But if a Frank-tenement be, it ſhall enure to the whole abſolutely.

A Confirmation to charge an eſtate, muſt have words to ſhew what Eſtate he ſhall have.

To confirm the Eſtate of Tenant for life, to his heires, cannot be but by *Habendum*, the Land to him and his heires: And therefore it is good to have ſuch a *Habendum* in all confirmations.

In a Confirmation, new ſervice may not be reſerved, old may be abridged.

A Confirmation made to one Diſſeizor, ſhall be voidable to the other, ſo ſhal not a Releaſe.

CHAP.

CHAP. XXXIX.

CONDITION.

There are two manner of Conditions, one expreſſed by Words, another implyed by the Law; the one called a Condition in deed, the other, a Condition in Law.

ESTATE made, and the condition againſt the law, the Eſtate's good, the Condition's void.

If the Eſtate beginneth by the Condition, then both are void.

Bonds with Conditions expreſly againſt the Law, are void.

Conditions repugnant, the eſtate good, the Condition void.

Conditions impoſſible, are void, the Eſtate good; it ſhall not enlarge any eſtate.

By pleading, a man may not defeat an Eſtate of Frank-Tenement, by force of a condition in Deed; without he ſhew the Condition of Record, or in writing ſealed; yet the Jurie may help a man, where the Judges will take their Verdict at large: of Chatttels he may.

Promiſe doth make a Condition; but when it doth depend upon another ſentence, or hath reference to another part of the deed, it maketh no condition, but a qualification,

or limitation of the ſentence, or of that part of the Deed, as provided, that the perſon of the Grantee ſhall not be charged.

He which hath intereſt in a Condition, may fulfill the ſame for ſafeguard of himſelf.

Between the parties, it is not requiſite the Condition be performed in every thing if the other do agree, but to a ſtranger it muſt.

If the Obligee be partie to any Act, by which the Condition cannot be performed; then the Obligor ſhall be diſcharged; So he ſhall be by the Act of the Condition.

Where the firſt Act in the Condition is to be performed by the Obligee, and he will not do it, there the Obligation is not forfeited.

Where no time is ſet, if the Condition be for the good of a ſtranger, or of the Obligee, then it is to be performed within convenient time, if for the good of the Obligor at any time during their lives; Immediately, ſhall not have ſuch a ſtrict conſtruction; but that it ſhall ſuffice, if it be done in convenient time.

If a man be bound to pay money, or farm Rent, he muſt ſeek the parties. But if he be bound to perform all payments; if he render his farm on the land, it ſufficeth.

If the Feoffee, or Feoffor die before the day of payment, the tender ſhall be to the Executor,

Executor, although the heire of the Feoffee do enter, if the heire be not named, *vide*, Assignee in assignement.

The money must be tendred so long before Sun-set; that the receiver may see to tell it.

To pay part of a Sum at the day, cannot be satisfaction for the whole sum, as a horse or a robe is. But before the day, or at another place, at the day of the request, and acceptance of the Obligee, is full satisfaction.

An Acquittance is a good barr, if nothing be paid.

In all cases of Conditions, a payment of a certain sum in gross, touching Lands, or Tenements, if lawfull tender be once refused, he which made the tender is discharged forever.

And the manner of the tender, and payment shall be directed by him that made it, and not by him that did accept it, as that he paid the sum in full satisfaction, and that he accepted thereof in full satisfaction.

An acquittance is a good bar, *&c.*

Where a man is bound to pay money, to make a Feoffment, or renounce an Office, or the like, and no time is limited when he shall do it, then upon request, he is bound to perform it, in so short a time as he may.

But where the time is limited, if he doe

refuſe before the day it is no matter, if he be readie to perform it at the day.

Where a Covenant or Condition is to marry or Enfeoff a ſtranger by ſuch a day; the refuſall of the ſtranger is no Plea, as that of the Obligee is; The Obligee is to be ready on the Land, at his own perill; a Stranger muſt be requeſted: if he refuſe, the Obligation is forfeited, wherefore it is good to have theſe words, if the Stranger do thereunto aſſent.

Entrie.

THe determination of an eſtate is not effected before entrie.

When any perſon will enter for a Condition broken, he muſt be ſeized on the ſame courſe and manner he was when he departed from his poſſeſſion.

It behoveth ſuch perſons as will re-enter upon their Tenants to make a demand of the rent.

If the Leſſor demand before he die, his heire may enter.

If the Leſſor diſtrain, he may not re-enter.

The Leſſor may accept of the Rent, and yet re-enter: but if he receive the next rent he may not, for that eſtabliſheth the Leaſe.

Entry into one acre in the name of more, is good; it doth not extend into two Counties.

By the Entry of the Husband, the Franck tenement ſhall be in the wife, and ſo of ſuch like.

In Gavill-kind Land, the eldeſt ſon only ſhall enter for the breach of a Condition.

Demand.

THe Land is the place where the rent is to be paid and demanded, if there be no other place appointed.

And there the Leſſor himſelf, or his ſufficient Attorney, a little before Sun ſet, in the preſence of two or three ſufficient witneſſes, ſhall ſay, here I demand of *I.B.* 10. l. due to me at the Feaſt of, *&c.* for a Meſſuage, *&c.* Which he holdeth of me in Leaſe by Indenture, *&c.* and there remain; the laſt day the rent is due to be paid until it be dark, that he cannot ſee to tell the money.

CHAP. XI.

WARRANTIES.

There are three manner of Warranties.

Lineall.

Collaterall.

By Diſcent.

VVArranty Lineall, is where a man by his Deed bindeth him and his heires to Warranty, and dieth, and the Warranty doth diſcend to his iſſue.

Warrantie Collaterall is in another line, ſo that he to whom it diſcendeth, cannot convey the title that he hath in the Teſtaments by him that made warranty.

Warranty by Diſſeizin, is where he which hath no right to enter, entreth, and maketh a warranty: this is by Diſſeiſin, and barreth not.

Lineall Warranty barreth him that claimeth Fee; and alſo Fee-taile with aſſets in Fee; if he ſell, his ſon may have a Formedon.

Collaterall Warranty is a barr to both, except in ſome caſes that be remedied by Statute, as Warranty by Tenement, by the curteſie, except he hath enough by diſcent, by the ſame Tenement.

Tenant.

In dower, for life, not remedied, but do barre the heire, and him in reverſion.

A Warranty diſcendeth alwaies to the heir at the Common law, *viz.* the eldeſt Son, and followeth the eſtate, and if the eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond Son in Gavillkind, although all the ſons ſhall be vouched, and not the eldeſt alone. Yet he only ſhall be barred.

To

To plead a Warranty againſt him that made it, or his heires, is called a Rebutter.

Where Fee, or Frank-tenement is Warranted, the party ſhall have no advantage, if he be not Tenant.

Where a Leaſe for years is warranted, it ſhall be taken by way of Covenant, and good, if he be outed.

The Feoffor by the words *dedi & conceſſi*, ſhall be bound to warranty, during his own life.

CHAP. XLI.

COVENANTS.

COvenants are of two ſorts; expreſſed by words in the Deed, or implyed by the Law. A covenant in Deed, is an agreement made by the Deed in writing, between two perſons to performe ſome things, and ſealed: for no writ of Covenant is maintainable without ſuch a ſpecialty, but in *London*, &c.

When a Covenant doth extend to a thing in being parcell of the demiſe, or thing to be done by force of the Covenant is *quodamodo*, annexed, or appertaining to the thing demiſed, and goeth with the land, it ſhall bind the aſſignee, if he be not named: as to repair the

houſes, it ſhall bind all that ſhall come to the ſame by the act of the law, or by the act of the party.

But if the Covenant do concern the land, or thing demiſed in ſome ſort, the Aſſignee ſhall not be charged, although he be named; as to make a Wall at anothers bodies houſe, or to pay a ſum of money to the Leſſor, or to a ſtranger, But the Leſſee his executors and Adminiſtrators ſhall be charged.

If the Covenant do extend to a thing that had no being, but to be made new upon the Land, it ſhould binde the Aſſignee, if he be named, becauſe he ſhall have the benefit of it.

If a man make a Leaſe for years, and the Leſſee covenanteth and granteth to pay, *&c.* to the Leſſor his heirs and aſſignes, yearly during, *&c.* ten pound, his Executors ſhall have it.

A Covenant in Law, upon a demiſe, or grant, the Aſſignee in Deed, or in law may have a Writ of Covenant.

An Obligation to perform all Covenants and grants is forfeit on the breach of a Covenant in law.

A Covenant in Law is not broken but by an elder title.

A Covenant in Law may be qualified by the mutual conſent of the parties.

CHAP.

CHAP. XLII.

How Chattels perſonal may be bargained, ſold, exchanged, lent, and reſtored.

A Contract is properly where a man for his mony ſhall have by the aſſent of another, certain goods, or ſome other profit at the time of the contract, or after.

In all Bargaines, Sales, Contracts, Promiſes, and Agreements, there muſt be *quid pro quo*, preſently, except day be given expreſly for the payment, or elſe it is nothing but communication.

If a man do agree for a price of wares, he may not carry them away before he hath paid for them, if he have not day expreſly given him to pay for them.

But the Merchant ſhall retain the wares until he be paid for them, and if the other take them, the Merchant may have an action of treſpaſs, or an action of debt for the money at his choice.

If the bargain be that you ſhall give me ten pound for my Horſe, and you do give me a penny in earneſt, which I do accept: This is a perfect bargain, you ſhall have the Horſe by an action of the Caſe, and I ſhall have the money by an action of debt.

If I say the price of a Cow is four pounds, and you say you will give me four pounds, and doe not pay me presently, you may not have her afterwards, except I will; for it is no contract. But if you goe presently to telling of your money, if I sell her to another, you shal have your action of the Case against me.

If I buy one hundred loads of Wood to be taken in such a Wood at the appointment of the vendor, if he upon request will not assigne them unto me, I may take them, or I may sell them: But if a stranger doe cut down any part of the trees, I may not take them; But I may supply my Grantee of the residue, or have my action of the Case.

If the bargain be, that I shall give you ten pounds for such a Wood, if I like it upon the view thereof, this is a bargaine at my pleasure vpon my view; and if the day be agreed upon, if I disagree before the day, if I agree at the day the bargain is perfect, although afterwards I do disagree. But I may not cut the Wood before I have paid for it; if I do, an action of Trespasse will lie against me, and if you sell it to another, an action of Trespas on the Case will lie against you.

If I sell my horse for money, I may keep him untill I am paid, but I cannot have an action of debt untill he be delivered, yet the property

property of the horse is by the bargain in the bargainer, or buyer; but if he do presently tender me my money, and I do refuse it, he may take the horse, or have an action of detainment. And if the horse die in my stable between the bargain and the delivery, I may have an action of debt for my money, because by the bargain the property was in the buyer.

If a Deed be made of Goods and chattels, and delivered to the use of the Donee, the property of the Goods and Chattels are in the Donee presently: before any entry, or agreement, the Donee may refuse them if he will.

If I take a horse of another mans, and sell him; and the owner take him again: I may have an action of Debt for the money, for the bargain was perfect by the delivery of the horse, *& caveat Emptor.* Every Contract importeth in it self an assumption: for when one doth agree to pay money, or deliver a thing upon consideration, he doth as it were, assume and promise to pay and deliver the same, and therefore when one selleth any goods to another, and agreeth to deliver them at a day to come: and the other in consideration thereof, agreeth to pay so much money on the delivery, or after, in this Case, he may have

have an action of Debt, or an action on the Caſe upon the aſſumption.

The duty to reſign an Action perſonal, may not be apportioned; as if I ſell my Horſe, and another mans for ten pounds, who taketh his Horſe againe, I ſhall have all the money.

If a man retained a ſervant for 10.*l. per annum*, and he depart within the year, he can have no wages: if it were to be paid at two Feaſts, and the man after the firſt Feaſt die, he ſhall have wages but for the firſt Feaſt; therefore men take order for it in their Wils.

By a Contract made in a Faire or Market, the property is altered; Except it be to the King; ſo that the buyer know not of the former property, and doe pay tole, and enter it; and thoſe things as thereupon ought to be done, it muſt be on the Market, and at the place where ſuch things are uſually ſold, as Plate at the Goldſmiths ſtall, and not in his Inner ſhop.

In exchange of a Horſe for a Horſe, or ſuch like, the bargaine is good without giving of day, or delivery.

If a thing be promiſed by way of recompence for a thing that is paſt; it is rather an accord than a contract; & upon an accord, there lieth no account, but he unto whom the promiſe is made, may have charge, by reaſon of the

the promiſe, which he hath alſo performed; then he ſhall have an account for the thing promiſed, though he that made the promiſe have no profit thereby; as if a man ſay to another man, heal ſuch a poor man, or make ſuch a high-way, &c.

The intent of the party ſhall be taken according to the Law, as if a man retain a ſervant, and do not ſay one year, or how long he ſhall ſerve him, it ſhall be taken for one a yeer, according to the Statute.

In all contracts he that ſpeaketh obſcurely, or ambiguouſly is ſaid to ſpeak at his own peril, and ſuch ſpeeches are to be taken ſtrongly againſt himſelf.

CHAP. XLIII.

Of Lending and Reſtoring.

IF Mony, Corn, Wine, or ſuch other things, which cannot be redelivered, be occupied or borrowed, if it periſh, it is at the peril of the borrower.

But if a Horſe, or a Cart, or ſuch other things, as may be uſed, and delivered again, be uſed in ſuch manner as they were lent, if they periſh, he that oweth them ſhall bear the loſs, if they periſh not through the de-

fault

fault of him that did borrow them, or that he did make a promise at the time of delivery, to redeliver them safe againe. If they be occupied in any other wise then according to the lending, in what wise soever it perish; if it be not in default of the owner, he that did borrow them, shall be charged with them in Law and Conscience.

If a man have goods to keep to a certain day, he shall be charged, or not charged after as default or defaults is in him.

But if he have any thing for keeping them safe, or make promise to redeliver them, he shall be charged with all chances that may fall because of his promise.

If a man finde goods of another mans, if they be hurt or lost by the negligence of him that found them he shall be charged to the owner.

If a common carrier go by waies that be dangerous for robbing, and will drive by night, or other unfit times, and is robbed; or if he do overcharge his Horse, or driveth so that his stuff fall into the Water, or otherwise be hurt by his default, he shall be charged by his default.

And if a Carrier would percase refuse to carry, unless a promise were to him, that he shall not be charged with any such misdemeanour, that promise were void. Every

Every Inholder is bound by the Law, *bona & Cattalla* of his Guest to keep in safety, so long as it is within the Inn, if the Guest did not deliver them unto him, nor acquaint him with them.

He shall not be charged if the Servant or Companion of the Guest do imbezel them; or if the Guest do leave them in the outward Court.

The Ostler shall not answer for the Horse that is put to pasture at the request of the Guest: but if he do it of his own head, he shall.

If any man offer to take away my Goods, I may lay my hands upon them, and rather beat him, then suffer him to take or carry them away.

CHAP. XLIV.

How far other mens Contracts and misdemeanours do bind us.

A MAN shall be bound by many Trespasses of his wife, but not to sustain corporal punishment for it.

For Murder, Fellony, Battery, Trespass, borrowing or receiving of money in his Masters name, by a Servant, the Master shall not be charged unless it be done by his command, or came to his use by his assent. If

If I command one to do a Treſpaſs, I ſhall be a Treſpaſſor, or otherwiſe if I do but conſent: There is no acceſſary in Treſpaſs.

We ſhall be charged if any of our family lay or caſt any thing into the high way, to the noſance of his Majeſties Liege People.

Every man is bound to make recompence, for ſuch hurt as his beaſts ſhall doe in the corne or graſs of his neighbour, though he knew not that they were there; and for his Dogs, Beares, *&c.* if they hurt the goods or Chattell of any other; for that he is to govern them.

A man ſhall not be charged by the contract of his wife or his ſervant, if the thing come to his uſe, having no notice of it: But if he command them to buy, he ſhal be charged though they come not to his uſe; or had notice therof.

If a Wife or Servant uſe to buy or ſell, if he ſell his Maſters Horſe, and exchange his Oxe for wheat that cometh to his Maſters uſe, his Maſter may not have an action of Treſpaſs for it, but he ſhall be charged for the corn, and the other need not to ſhew that he had warrant to buy for him.

If a man-ſervant that keepeth his ſhop, or that uſeth to ſell for him, ſhall give away his goods, he ſhall have Treſpaſs againſt the Donee.

But

But if I deliver my Goods to another to keep to my uſe, and he do give them away, I ſhall not: for the Donee had notice whoſe goods they were, as in the caſe of the ſervant.

If a man make another his general receiver, which receiveth money, and maketh an acquittance, and payeth not his Maſter; yet that payment diſchargeth the debtor.

If a ſervant keep his Maſters fire negligently, an action lieth againſt the Maſter: Otherwiſe if he bear it negligently in the ſtreet.

If I command my ſervant to diſtrain, and he doth ride on the diſtreſs; he ſhall be puniſhed, not I.

If a man command his ſervant to ſell a thing that is defective, generally to whom he can ſell it; deceit lieth not againſt him: Otherwiſe if he bid him ſell it to ſuch a man, it doth.

A Contract or a promiſe made to the wife is good, when the husband doth agree, ſo it is to a ſervant; and it ſhall be ſaid to be made to the husband and Maſter himſelf.

If a man taketh a wife that is in debt, he ſhall be charged with her debts, during her life; if ſhe die, he ſhall be diſcharged.

CHAP.

CHAP. XLV.

Wills and Testaments.

Having hitherto treated of such contracts as do take effect in the life time of the parties, with their differences, it is now to deale with Instruments which take effect after their Deaths; that those things which they have preserved with care, and gotten with paines in their life, might be left to their posterity in peace and quietnesse after their Death: of which sort are last Wils and Testaments.

There are two sorts of Wils; Written and Nuncupative.

A Nuncupative Testament is when the Testator doth by Word onely without writing declare his Will, before a sufficient number of Witnesses, of his Chattels onely: for Lands passe not but by writing; It may for the better continuance after the making, be put in writing, and proved: But it is still a Testament Nuncupative.

A written Testament is that, which at the very time of the making thereof is put in writing; by which kind of Testament in writing, only Lands and Testaments pass, and not by word of mouth only. Two

Two things are required to the perfection of a Will, by which Lands paſs, *viz.* Firſt writing, which is the beginning. Secondly, the death of the Deviſor, which is the finiſhing.

In a Will of Goods, there muſt be an Executor named; otherwiſe of Lands.

A man may make one Executor or more ſimply, or conditionally for a time, or for parcel of his Chattels.

If no Executor be named, then it ſtill retaineth the name of laſt a Will, and ſhall be annexed to the Letters of Adminiſtration in regard of the Gift.

Gavil kinde Lands may be deviſed by cuſtome.

Lands { *In Socage tenure* } *all* { *is deviſable*
holden { *Knights Service* } *2 parts* { *in writing.*

FEAR, fraud, and flattery, three unfit accidents to be at the making of a Will.

A woman may make a Will of the goods of her husband, by his conſent and licenſe; by Word is ſufficient, and of the goods ſhe hath as Executor, without his conſent; but ſhe cannot give them unto him.

A boy after his age of fourteen, and a Maid after her age of twelve may make a Will of their goods and Chattels by the Civil Law.

The will of the Donor ſhall be alwayes obſerved, if it be not impoſſible, or greatly contrary to the Law.

A Deviſor is intended *Inops conſilii*, and the Law ſhall be his Counſell, and according to his intent appearing in his Will, ſhall ſupply the defect of his words.

A Prerogative Will is five pound in another Dioceſs.

A man may not traverſe the Probate of a Teſtament, or Letters of Adminiſtration directly, but he may ſay againſt the Teſtament that the Teſtator never made the party his Executor.

CHAP. XLVI.

DEVISES.

A Deviſe ought to be good and effectual at the time of the death of the Deviſor.

The Deviſee may not enter into the terme, or take a Chattell, but by the delivery of the Executor.

But he may ſue for it in Court Chriſtian.

Into Frank-tenement, or inheritance he may enter.

Deviſees are Purchaſees, as if a Leaſe for years be Willed to a man and his Heires, the Heire ſhall have it; for Heire is a name of purchaſe here.

A

A Reverſion of Lands or Tenements will paſs by the name of Lands and Tenements in a Deviſe.

If a man deviſe all his Lands and Tenements; a Leaſe for years doth not paſs, where he hath Lands in Fee, and alſo a Leaſe there; otherwiſe it will.

If a man deviſe all his goods, a Rent-charge which he had for years will paſs, and all other his perſonall Chattells.

And if a man give all his moveables to one, he ſhall have all his Horſes, Cattell, pans, and perſonall chattells; and all his immoveables to another, he ſhall have all his Corn growing, and fruit on his Trees, and the chattells reall.

A man may deviſe Lands or goods to an Infant in the mothers belly, or goods to the Church-wardens of *D.*

There is great diverſity where the property is deviſed, and when the occupation is deviſed: A man may deviſe that a man ſhall have the occupation of his Plate, or other chattells during his life, or for years, and if he die within the term, that it ſhall remain to *M. A.* and it is good, for the firſt hath but the occupation, and the other after him ſhall have the property.

But if a chattell be given to one for life, the

remainder to another, the remainder is voyd.

For a Grant or Deviſe of a Chattel for an houre, is good for ever; and the Deviſee may diſpoſe of it; but if he do not, the other ſhall have it.

A man may Deviſe his Lands he holdeth in Leaſe, but not his Leaſe, under this condition, Provided, that if the Deviſee die within the term then he ſhall have it.

If a man Will his goods to his wife, and that after her deceaſe, his Son and Heir ſhall have the Houſe wherein they are; ſhe ſhall have the houſe for term of her life, yet it is not deviſed unto her by expreſs words. But it doth appear that his intent was ſo by the words.

If a man willeth his Lands to his wife, til his Son commeth to the age of 21 yeers, and the woman taketh another husband, and dyeth, the husband ſhall have the Intereſt.

By a Deviſe a man may have the Fee-ſimple without expreſs words of Heirs, as if Lands be willed to a man for ever, or to have and to hold to him and to his aſſignes, &c.

By Will, Lands may be intailed without the word, Body: as if Lands be given to a man, and to his heirs male, it doth make an eſtate tail.

If a man Will that his Executors ſhall ſell his Lands, the inheritance doth deſcend to the

the Heir; yet the Executors may enter, and enfeoffe the Vendee.

But if Lands be given to the Executor to ſell, and they receive the profits thereof to their own uſe, and do not ſell the ſame in reaſonable time, the Heir may enter.

An Executor may ſell, if the other will not.

If Lands be recover'd againſt Tenant for life or for years, by an action of Waſte, or former title, he may not give his Corn.

If the Cognizee have ſown the Lands, and the Cognizor bring a *ſcire*: he may give the Corn ſown.

If a man Deviſe *omnia bona & Cattalla*, Hawks nor Hounds do not paſs, nor the Deer in the Park, nor the Fiſh in the Ponds.

CHAP. XLVII.

Executors.

AN Executor is he that is named and appointed by the Teſtator, to be his ſucceſſor in his ſtead to enter, and to have his goods and chattels, to uſe Actions againſt his Debtors, and Legacies, ſo far as his goods and chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth re-

fuſe, notwithſtanding he that refuſeth may adminiſter at his pleaſure, and the other muſt name him in every action, for every duty due to the Teſtator, and his releaſe ſhall be a good barr: If he do ſurvive he may adminiſter, and not the Executor of him that died; but otherwiſe if all had refuſed.

If one prove the Will in the name of both, he that doth not adminiſter ſhall not be charged.

If the Executor do once any action that is proper to an Executor, as to receive the Teſtators debts, or to give acquittance for the ſame, *&c.* he may not refuſe.

But other acts of charity or humanity, he may do; as to diſpoſe of the Teſtators goods about the Funerall, to feed his cattell leaſt they periſh, or to keep his goods leaſt they be ſtoln, theſe things may every one do, without danger.

When Executors do bring an action, it ſhal be in all their names, aſwell of them that do refuſe, as of other,

But an action muſt be brought againſt him that doth adminiſter only, and he which firſt cometh ſhall firſt anſwer.

An Executor of an Executor, is Executor to the firſt Teſtator. And ſhall have an action of debt, accompt, *&c.* or treſpaſs, as of the goods of

of the first Testator carried away, and execution of Statutes and Recognizances, *&c.* St. 25. *Ed.* 5.

The title and interest of an Executor, is by the Testament, and not by the Probate, but without shewing it, they may release the Probate.

The Justices wil not allow them to sue actions.

The Executor shall have the wardship of the Body and Lands of the Ward in Knights service, but not in Soccage, and Leases for years, and rent charges for years, Statutes, Recognizances, Bonds, Lands in Executions; Corn upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattell, and all other goods and Chattells of the Testator, if they be not devised, and may devise them; But if he do will *omnia bona & Cattalla sua*, the goods of the Testator pass not, neither shall they be forfeited by the Executor.

An Executor is chargeable for all duties of the Testator that are certain; but not for Trespass, nor for receipt of rents, nor for occupation of Lands, as Bailiffe or Guardian in Soccage, *&c.* For this is not any duty certain so farr as he shall have Assets; If the Executor do waste the goods of the Testator, he shall pay them of his own.

An Executor shall not be charged, but with

with such goods as come to his hands, but if a stranger take them out of his possession, they are assets in his hands.

If an Executor take goods of another mans amongst the goods of the Testator, he shall be excused of the taking in Trespas.

Duties by matter of record shal be satisfied before duties by specialty, and duties by specialty before charges, and Legacies before other duties.

An Executor may pay a debt or credit of some kind, depending the writ, before notice of the action, but not after notice or issue joyned.

An Executor may pay debts with his own money, and retain so much of the Testators goods, but not Lands appointed to be sold.

Any of these words, *debere*, *solvere*, *recipere*, borrowed, or any word that will prove a man a debtor or to have the money; If it be by Bill will charge the Executor, or Administrator, but not the Heir, if he be not named.

CHAP. XLVIII.

ADNINISTRATORS.

AN Administrator, is he to whom the Ordinary of the place where the intestate dwelt, committeth the Testators goods, Chattel, credits, and rights.

For

For whereſoever a man dieth inteſtate, either for that he was ſo negligent he made no Teſtament, or made ſuch an Executor as refuſed to prove it, or otherwiſe is of no force; the Ordinary may commit the adminiſtration of his goods to the Widow, or next of kin, or to both, which he pleaſeth, making requeſt; and revoke it again at his pleaſure.

The Ordinary may aſſigne alſo a Tutor to the inteſtates children, to his ſonnes untill twelve year.

But ſo that it be not a prejudice to him that is the Guardian; and after thoſe years, he or ſhe may reſpectively chooſe their own Curators, and the Guardian may confirm them, if there be not good order taken by their fathers Will.

As if ſuch a Tutor die, the Infant cannot have an Action of account againſt his Executor.

The power and charge of an Adminiſtrator is equall in every point to the power and charge of an Executor: a man may have an action of the caſe againſt the Executor or Adminiſtrator upon the aſſumption of the Teſtator, upon good conſideration, or debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the

the will to the Tutor of the Child, to the Childs behoof, until he be of the age of 17. years, and if he be granted for longer time, it is void.

An Administrator *durante minoritate*, may do nothing to the prejudice of the Infant, he may not sell any of the goods of the deceased unless it be upon necessity, as for the payment of debts, or that they would perish; nor let a Lease for a longer time, then whilst he is Executor.

An infant upon the true payment of a debt due to the Testator, may make an acquittance, and it shall be good.

For a Child may better his estate but not make it worse.

CHAP. XLIX.

HEIR.

IF a man die seised of any Lands, and do not dispose of them by his Will they do descend to his Heir, as aforesaid.

And he shall have not onely the Glass, and Wainscot, but any other of such like things affixed to the Free-hold, or ground; as Tables, Dormant, Furnaces, Fats in the Brew-house, or Dye-house; and the Box

Box or Cheſt wherein the Evidences are; the Hawks and the Hounds, the Doves in the Dove-houſe, the Fiſh in the Pond, and the Deer in the Parke, and ſuch like.

He ſhall be charged by ſpecialty, for the debts of his Anceſtour, ſo long as he hath aſſets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the Heir for the wrong, or treſpaſs of his Father, but by expreſs words.

Widow.

THe Widow ſhall have all her apparell, her bed, her copher, her chains, borders, and Jewels, by the honorable Cuſtome of the Realm, except her Husband unkindly give any of them away; or be in debt, that it cannot be paid without her Bed, &c. yet ſhe ſhal have her neceſſary apparell.

What things are Arbitrable, and what not.

THings, and Actions perſonall incertaine are Arbitrable, as Treſpaſſe, taking away of a Ward, &c.

But things certain are not arbitrable, but when the ſubmiſſion is by ſpecialty, if they be not joyned with others incertain, as debt with treſpaſs, &c.

Matters

Matters concerning the common-wealth; ſome are not arbitrable as criminall offences, felonies and ſuch like, concerning the crime.

In the ſubmiſſion, three things are to be regarded.

Firſt, that it be made in writing with the parties Covenants, or bonds ſubſequent and ſufficient to binde them, their heires, Executors, and Aſſignes to performe the Award, which ſhal be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power. For all is void that is not contained in the Submiſſion, or neceſſarily depending thereupon; And the Arbitrators labour loſt, if they want means to compell the ſame to be executed.

Secondly, that there be power given to them ſufficient to do all things neceſſary for the ordering of the controverſies, as to appoint times and places for their meetings, to examine and decide the matters committed, and to bring their parties with their proofs, evidences, and witneſſes thither together before them, and to puniſh the place defective, and to expound and correct ſuch doubtfull ſentences, and queſtions, as may ariſe upon their Award, afterwards inconvenient to either parties, contrary to equity, and the Arbitrators good meaning; which inconveniencies were

were not before by them seene, at the making of the Award, *Temporis filia veritas.*

Thirdly, convenient time and place are to be limitted for the yeelding up their Award to the parties, or to their assignes.

Six things to be regarded in an Arbitrement.

1. THat it be made according to the very submission, touching the things committed, and every other circumstance,

2 That it be a finall end of all controversies committed.

3 That it appoint either partie to give or doe unto the other something beneficiall in appearance at least.

4 That the performance be honest and possible.

5 That there be a mean how either part by the Law may attain unto that which is thereby awarded unto him.

6 That every partie have a part of the Award delivered unto him.

For if it faile in any of these points, then is the whole Arbitrament voyde, and of none effect.

Examples thereof.

1 AN Award that the parties shall obey the Arbitrament of *A. M.* is void, for power may not be assigned.

2 An

2 An Award that any of the parties ſhall be bound, or do any other Act by the advice of the Arbitrator, is not good except it be in the ſubmiſſion ſo, but that the parties ſhall be bound, or make aſſurance by the adviſe of Counſel, is good.

2 An Award, that the parties ſhall be non-ſuited, is not good, becauſe it is no final end, for the party may begin again: that the party do withdraw his ſute, is good.

If the ſubmiſſion be of divers things, and the Award onely of ſome of them, yet is the Award good for that part, as if the Submiſſion be of all Actions real and perſonal onely, or if it be onely, *de poſſeſſione*.

3 If to ſubmit themſelves to the Arbitrament of all treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit; this Award is void.

So it were if one of them ſhould go quite againſt the other, if the Submiſſion were not by bond, for an Award muſt be final, obligatory, and ſatisfactory to both parties.

An Award, that either party ſhall releaſe to the other all actions, and that becauſe the one hath treſpaſſed more then the other, he ſhall pay to the other firſt, is good.

In debt or treſpaſs of goods taken, that the

the Defendant ſhall retain part, and the Plaintiffe to have the reſt, is not good.

4 An Award, that one of the parties ſhall do an act to any Stranger, the act is void, if the parties be not bound.

Or if it be that he ſhall cauſe a Stranger to enfeoffe, or be bound to the other partie, becauſe he hath no means to compel the ſtranger.

5 An Award is void, if it be neither executed, nor any means by law for the execution thereof, as if it ſhould be awarded that one ſhould pay the other 10 pounds, this is good, for he may recover the ſame by an action of debt. But if it were awarded, the one ſhould deliver to the other an acre of Land, or do ſuch like act Executory, it were void, if it be not delivered ſtraight-way, or proviſion made by bond, or otherwiſe to compel the payment thereof, according to the Award, if the ſubmiſſion be not by ſpecialty.

6 Indentures of Arbitrament muſt be made of ſo many parts, that every perſon may have a part.

Arbitramentum æquum tribuit cuique ſuum.

AN Award is commonly made by Laymen, and ſhall be taken according to their intent, and not in ſo preciſe a form as Grants,

Grants, or pleadings, but as verdicts, yet the ſubſtance of the matter ought to appear either by expreſs words, or by words equivalent, or by thoſe that do amount thereunto.

But it were good that Awards were drawn up by ſome that is skilful, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

Agreement.

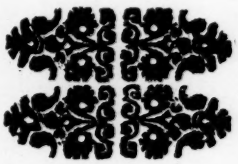
AN agreement is made between the parties themſelvs; there muſt be a ſatisfaction made to either party preſently, or remedy for the recompence, or elſe it is but an indeavour to agree.

Tender of money without payment, or agreement to pay money at a day to come, is not any ſatisfaction before the day be come, and the money be paid; it cannot be pleaded in Bar, in an action of Treſpaſs. For that as the other partie hath no meanes to compell the other to pay the money: So he may refuſe it at the day, if he will, otherwiſe in an Arbitrament; but money paid at a day, before the Action brought, is a good plea.

FINIS.

A TREATISE OF PARTICULAR ESTATES.

Written
By Sir JOHN DODDRIDGE
KNIGHT.



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A TREATISE OF PARTICULAR ESTATES.

Particular ESTATES.

A Particular Eſtate is ſuch, as is derived from a general Eſtate, by ſeparation of one from the other; As if a man ſeiſed in Fee ſimple of Lands, or Tenements, doth thereof cheat by gift or grant an Eſtate Tayle, or by demiſe a Leaſe for life, or by eſtate for years, theſe are in the Donee, or Leaſee. Particular Eſtates in poſſeſſion derived and ſeparated from the Fee ſimple, in the Donor, or Leaſor in Reverſion.

Alſo if Lands be demiſed to *A.* for life, the remainder to *B.* and the Heires of his body, the remainder to *C.* and his heires, the Eſtate for life limited to *A.* the Eſtate Tayle limited to *B.* are particular Eſtates derived *ut ſupra*, and ſeparated in Intereſt from the Fee ſimple; the remainder given to *C.* albeit the ſame remainder doth depend upon thoſe Particular Eſtates.

And of Particular Eſtates, ſome are created by agreement between the Parties; and the particular Eſtates before ſpecified: And ſome by act of Law; as the ſtate in Tayle *après* poſſibility *de* iſſue extinct, Eſtates by the courteſie of *England*, Dower and Wardſhip; for albeit an eſtate in Dower, be not compleat untill it be aſſigned, which oftentimes is done by aſſent and agreement betweene parties; yet becauſe the partie that ſo aſſigneth the ſame, is compellable ſo to do by courſe of Law, that Eſtate is alſo ſaid to be created by Law; alſo an Eſtate at will is a kinde of particular Eſtate, but yet not ſuch as maketh any Diviſion of the Eſtate of the Leſſor, is ſeiſed, for notwithſtanding ſuch an Eſtate, the Leſſor is ſeized of the Land in this Demeſure as for Fee in poſſeſſion, and not in Reverſion.

Alſo an Eſtate at will is not ſuch partie

lar Eſtate, whereupon a Remainder may depend; But of all the Eſtates before mentioned, many fruitfull rules, and obſervations, are both generally, and particularly ſo lively ſet forth by the ſaid Mr. *Littleton* in the 1, 2, 3, 4, 5, 6, 7, and 8. Chapters of his firſt Book, which is extant as wel in *Engliſh* as in *French*, whereunto I referr you.

Poſſeſſion.

IT is further to be obſerved, that all Eſtates that have their being, are in Poſſeſſion, Reverſion, Remainder, or in Right, but of all theſe, Poſſeſſion is the Principall: there are two degrees of the firſt, and chiefeſt poſſeſſion, *in fait poſs*, in Law or Deed, is ſuch as is before ſpoken of: And that is moſt proper to an Eſtate, which is preſent and immediate; but yet ſuch poſſeſſion of the immediate Eſtate, if it be not greater then a tearm doth operate and enure to make the like poſſeſſion of the Free-hold, or Reverſion; when a man is ſaid to have a Tearm, it is to be intended for years, when it is ſaid, a man to have the Fee of Lands, it is alſo to be intended a Fee ſimple; Poſſeſſion is that poſſeſſion, which the Law it ſelf caſteth upon

a man before any Entry, or Pernancy of the profits: As if there be Father and Son, and the Father dieth ſeiſed of Lands in Fee, and the ſame do deſcend to the Sonne, as his next Heire in this caſe, before any entry, the ſame hath a poſſeſſion in Law; ſo it is alſo of a Reverſion exportant, or a Remainder dependant upon particular Eſtate, or life; in which caſe, if Tenant for life die, he in Reverſion, or Remainder, before his Entry, hath only poſſeſſion in Law. All manner of poſſeſſions that are not poſſeſſions in *fait*, are only poſſeſſions in Law; and it is to be obſerved then, if a man have a greater Eſtate in Lands then for years, the proper phraſe of ſpeech is, that he is thereof ſeiſed; but if it be for years only, then he is thereof poſſeſſed: But yet nevertheleſs the Subſtantive (poſſeſſion) is proper as well to the one as to the other.

Reverſion.

A Reverſion is properly an Eſtate which the Law reſerveth to the Donor, Grantor, or Leſſor, or ſuch like, which he doth diſpoſe parcel of his Eſtate, when he doth diſpoſe leſs Eſtate in Law then that whereof he was ſeiſed at the time of ſuch diſpoſition: as if a man

ſeiſed

ſeiſed of Lands in Fee, doth give the ſame to another; and the Heires of his body, or if he doth diſmiſs the ſame for life or years; in theſe caſes the ſame reſerveth the reverſion thereof in Fee, to the Donor, or Leſſor, and his Heires; becauſe he departed not with his whole Eſtate, but onely with a particular Eſtate, which is leſs then his Eſtate in Fee; and ſuch Reverſion is ſaid to be expectance upon the particular Eſtate. Alſo if he that is but Tenant for life, for Land, and doth by Deed or paroll, give the ſame *S.* in Tayle, or for tearm of his life, which is a greater Eſtate then he may lawfully diſpoſe; In this caſe the Law reſerveth a Reverſion in Fee, in ſuch Donor, though he were formerly but Tenant for life: and the reaſon thereof is, for that by ſuch unlawfull diſpoſition, which by deed or word, cannot be without livery and ſeiſin, he doth by wrong pluck out the rightfull ſtate in Fee, from him that was thereof formerly ſeiſed in Reverſion or Remainder, and thereof by a priority of time, gained in an inſtance, he was ſeiſed of a Fee ſimple, at the time of the executon thereof. But if a man ſeiſed of Lands in Fee ſimple, giveth the ſame to *A.* and his heirs, until *B.* do die without heire of his body; in this caſe the Law reſerveth no Reverſion in the Donor, becauſe the

the ſtate is diſpoſed to *A.* is a Fee ſimple, determinable, is in nature ſo great as the ſtate, which the Donor had at the time of ſuch gift, and conſequently he departed thereby with al his ſtate, and therby an apparent difference is between a gift made to *A.* and the heires of his own body, and a gift made to him and his heires, until *B.* die without heire of his body: for in the one caſe the Donor hath but an Eſtate Tayle, and in the other a Fee ſimple determinable, hath a poſſibility of Revertor: for if *B.* die without heire of his body, then whether *A.* be living or dead, ſhall revert to the Donor, but ſuch poſſibility of Reverſion, for he that hath but ſuch a poſſibility, hath no Eſtate, nor hath he power to give his poſſibility; but in the other caſe, the Donor hath Eſtate in Fee; and therefore he hath power to diſpoſe thereof at his pleaſure.

Remainder.

A Remainder is a remnant of an eſtate diſpoſed to another at the time of creation of ſuch particular Eſtates, whereupon it doth depend, as if *S.* ſeiſed of lands in Fee, demiſeth the ſame to *B.* for life, the remainder to *C.* and the heirs of his body, the remainder to *D.* and his heirs; In this caſe

caſe *I. S.* hath a particular Eſtate of the Leſſor, is then alſo diſpoſed to *C.* and *D. ut ſupra*, whereby *B.* hath an Eſtate for life, *C.* a Remainder in Tail, and *D.* a Remainder in Fee, depending in order upon the particular Eſtate in poſſeſſion; and in every Remainder five things are requiſite.

Firſt, That it depend upon ſome particular Eſtate.

Secondly, That it paſs out of the Grantor, Donor, or Leſſor, at the time of the creation of the particular Eſtate, whereon it muſt depend.

Thirdly, That it veſte during the particular Eſtate, or at the inſtant time of the determination thereof.

Fourthly, That when the particular Eſtate is created, there be a Remnant of an Eſtate left to the Donor, to be given by way of Remainder.

Fifthly, That the perſon or body to whom the Remainder is limitted, be either capable at the time of limitation thereof, or elſe in *potentia propinqua*, to be thereof capable, during the particular Eſtate; If Lands be given to *I. S.* and his Heirs, the Remainder for default of ſuch Heir to *I. D.* and his Heirs, that Remainder is void, becauſe it doth not depend upon any particular Eſtate; But if Lands

Lands be given to *I. D.* the life of *I. D.* the Remainder to *I. B.* his Remainder is good, for it is not limited to depend upon a Fee-simple, but upon a particular Estate; which is onely called an Estate for life of *I. B.* descendable: if Lands be given to *B.* for 11. years, if *C.* do so long live, the Remainder, after the death of *C.* to *D.* in Fee, this Remainder is void, for in this case it cannot pass out of the Lessor at the time of the creation of the particular Estate for years: but if a Lease be made to *B.* for life, the Remainder to the Heires of *C.* (who is then living) this Remainder is good, upon a contingency, that if *C.* dye in the life of *B.* for that Remainder may well pass out of the Leassor presently without *be yaunce*, without any inconveniency, because onely the inheritance separated from the Free-hold, is in abeyance: if Lands be given for life, with a Remainder to the right Heirs of *I. S.* and the Tenant for life dyeth in the life of *I. S.* this Remainder is void, because it died not vest or settled, either during the particular Estate, or at the time of the determination thereof, for until, *I. S.* die, no person is thereof capable, by the name of the Heir.

But if Lands be given to *I. S.* for terme of his life, the Remainder to his right Heir, in

(in the ſingular number) and the Heirs of his body, and after *I. S.* hath iſſue a Son and dyeth, that is a good Remainder, and the Son hath thereby an Eſtate Tail, for although it were unpoſſible that ſuch Remainder ſhould veſt during the particular Eſtate; becauſe during his life, none could be his Heir; yet it might be and did veſt at the inſtant of his death, which was at the time of his determination of the particular Eſtate.

Concerning the fourth thing, if a man ſeiſed of Lands in Fee, granteth out of the ſame a Rent, or Common to Paſture, or ſuch like things, which before the grant had no being, to *I. S.* for terme of life, the Remainder to *I. D*, in Fee, this Remainder is void, becauſe of this thing Granted, there was no Remnant in the grant to diſpoſe. And becauſe ſome heretofore have been of opinion, that albeit the ſame cannot take no effect, as another Grant of a new Rent or Common. *Ut res magis valeat quam operat.*

This is a rule in Law, that a thing enjoyed in a ſuperior degree, ſhall not paſs under the name of a thing, in any inferior degree; and therefore if Lands be given unto two perſons, and unto the Heirs of one of them, unto the Husband and Wife, and Heir of the Huſband;

band; and he that hath the Eſtate of Inheritance, granteth the Verſion of the ſame Land to another in Fee, ſuch Grant is void, becauſe the Grantor was thereof ſeiſed in a ſuperiour degree, *viz.* in Poſſeſſion, and not in Reverſion, as appeareth 22. *Ed.* 4. *fol.* 2 & 13. *Ed.* 3. *Brook.* title of Grants, 137.

And concerning the firſt and laſt thing, if a Leaſe be made of Land, for term of life, the Remainder to the Major and Commonalty of *D.* whereas there is no ſuch Corporation therein, being this Remainder is meerly void, albeit the Kings Majeſty by his Letters Pattents, do create ſuch Corporations, during the particular Eſtate; for at the time of ſuch grant, the Remainder was void, becauſe then there was no ſuch body corporate thereof capable, or *potentia propinqua* to be created and made capable thereof, during the particular Eſtate, but the poſſibility thereof, was then forraign and probably intended. The like law is, if a remainder be limited to *I.* the Son of *T. S.* who had then no Son, and afterwards during the particular Eſtate, a Son is born who is named *John*, yet this Remainder is void; for at the time of ſuch a Grant, as was not to be probably in tender, that *T.* S. ſhould have any Son of that name.

Alſo

Alſo before the diſſolution of Abbies; if a Leaſe of Land were made to *I. S.* for life, the Remainder to one that then was a Monk, ſuch Remainder was void, for the cauſe before alledged, albeit we were deraigned during the particular Eſtate. But if ſuch Remainder had been limitted to the firſt begotten Son of *I. S.* it had been good, and ſhould accordingly have veſted in ſuch a Son afterwards born, during the particular Eſtate.

Rights.

A Right in Land, is either cloathed or naked; a Right cloathed, is when it is wrapped in a poſſeſſion, Reverſion, or Remainder; a naked Right, which is alſo moſt commonly called a Right, is when the ſame is ſeparated from the poſſeſſion or Remainder, by diſſeiſin, diſcontinuance, or the deveſting, and ſeparating of the poſſeſſion; as for example, if a Leaſe of Land be made for life to *I. S.* the Remainder to *I. D.* in Fee, in this caſe *I. S.* hath a Right cloathed with a Remainder. But if a Stranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put *I. S.* out of poſſeſſion

poſſeſſion, ſuch entry by wrong is called a diſſeiſin; and therefore the poſſeſſion is moved from the Right by reaſon thereof, the Diſſeiſor, is ſeiſed of the Land, and *I. D.* hath alſo the like naked cloathing to the Remainder, by ſuch diſſeiſin, is likewiſe deveſted, and plucked out of him, cannot be reveſted in him, during the Right of ſuch particular Eſtate, unleſs the poſſeſſion of the particular Tenement but therewith reveſted; which muſt be by this entry or recovery by action; and by ſuch entry of the particular Tenement, or by his Recovery, with execution, the Remainder ſhal be inveſted, as well as the particular Eſtate; and ſo there is a Right in goods and chattels, as well as Lands, Tenements, and Hereditaments, which is alſo cloathed with a poſſeſſion, ſo long as the Rightful proprietor hath the ſame; but if another doth take them from him by wrong, he now hath onely a naked Right to the ſame, which cannot be by him granted, for the cauſe before alledged, but yet he may releaſe his Right there unto him that is thereof poſſeſſed; for the ſame reaſon that is before alledged, if a releaſe of Right, happen to be forfeited to the King, his Highneſs may grant the ſame by his Prerogative.

FINIS.

CERTAIN OBSERVATIONS CONCERNING A DEED OF FEOFFAMENT.

By *T. H.* Gent.

Cujus poſſe eſt velle.

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CERTAIN OBSERVATIONS CONCERNING A DEED OF FEOFFAMENT.

The Premiſſes.

YOU may finde in the Premiſſes, Firſt, The direct nomination, as well of the Feoffor, as of the Feoffee, together with their places of reſidence, habitation or dwelling, and their qualities, eſtates, additions, or conditions. Secondly, The certain

expreſſement and ſetting down of the Lands conveyed.

In Com. Norff.) *Comitatus dicitur a comitando*, of accompanying together, for generally at Aſſiſes and Seſſions, thoſe of that County where ſuch Aſſiſes or Seſſions are kept uſe to be impannelled upon Juries, &c. for trial of iſſue taken upon the fact betwixt party and party, and not thoſe in another County; and it is a common preſumption, that al perſons within their Counties take notice of ſuch things as are there publickly don, hereupon it hapneth, that where Lands, &c. lie in divers Counties, if they be conveyed by Feoffament, &c. livery of ſeiſin, muſt be made in every County, where any parcel of the lands, &c. do lie. Otherwiſe it is of two parcels of land in one and the ſame County. The name County, is in underſtanding al one with Shire, which is ſo called from dividing, and either of them contain a certain portion of the Realme, which is parted into Counties, or Shires, for the better government thereof, and the more eaſie adminiſtration of Juſtice; hence it cometh to paſs, that there is no parcel of this Kingdome, which lieth not within the circuit or precinct of ſome County or Shire. There are reckoned in *England*, 41. Counties or ſhires, and in *Wales* 12. The

County

County of *Northfolke* lying Northward, is ſo called, in oppoſition to *Suffolke*, which lyeth towards the South, each one in reſpect of other gaineth his name.

The addition given to the Feoffor, you may perceive to be *Yeoman*, the Etymology whereof, Mr. *Verſtegan* fetcheth from *Gemen*, a word anciently uſed amongſt the *Teutonicks*, which as my Authour ſaith, ſignifyeth vulgar or common, and ſo the letter G. by corruption being turned into the letter Y. inſtead of *Gemen*, we ſay and read *Yemen*, or *Yeomen*. Others, (how probably I dare not affirm) derive it by contraction from theſe two words, *viz. Young Men.* Famous Maſter *Cambden*, in his *Britannia*, after he hath reckoned up ſundry degrees, both of Nobility, and Gentry, ranketh *Yeomen* in order next Gentlemen, naming them *Ingenuos*, in which ſence I apprehend *Yeomen* to be mentioned in a certain Statute made 16 *R.* 2. and in divers other Statutes. And although the derivations of words be conveniently required in the Law, & in every liberal Science, for *ignoratis termi ignoratur & ars*, yet to uſe the expreſſion of a learned Divine, though ſpoken in another caſe *Melius eſt dubitare de occultis quam litigare de incertis*: So I muſt leave you to your own conceit, concerning the o-

riginall of the word *Yeoman*, having onely ſet you down one or two opinions about it: however, I muſt not forget what Sir *Thomas Smith* ſaith in his *Repub. Anglorum*, who very truely and properly calleth him a Yeoman whom the Laws of *England* call *legalem hominem*, that is to ſay a free man born, and M. *Lambert* in his *Eirenarcha*, will excellently inform you who are, and who are not *probi & legales homines*.

There is no ſpeciall, but only a generall conſideration expreſſed in the Feoffament, neither of which (as I conceive) is in ſuch caſe abſolutely materiall (though I may ſay formall) in regard of the notoriety of deeds of Feoffament, *&c.* for livery and ſeiſin (as ſhall be ſaid afterwards) is eſſentially required to make them perfect, which cannot be without the knowledge of others, beſides the parties themſelves, and a Feoffament doth thereby always import a free and willing conſent, otherwiſe peradventure it might have happened in a Bargain and ſale, before 27. *H.* 8. *cap.* 16. for the better illuſtration whereof, take this example: You and another man agree together, that you ſhall give him a certaine ſumme of money, for a parcell of Land, and that he ſhall make you an aſſurance of it, you pay him the money, but he maketh

maketh you no aſſurance; in this caſe although the ſtate of the Land be ſtill in him, nevertheleſs, the equity *in conſcientia boni viri*, is with you, which equity is called the uſe, for which until the 27. *H.* 8. *cap.* 10. there was no remedy (as ſaith Sir *Francis Bacon*) and that very truly, except in the Court of Chancery, but the ſame Statute conjoyneth and annexeth the Land and the uſe together, ſo you by this means for the conſideration have the Land it ſelf, without any further Conveyance, which is called a bargain and ſale. But thoſe grave Senators, and worthy States men who made the ſaid Act of the 27. *H.* 8. *cap.* 10. for the transferring of uſes into poſſeſſion, wiſely fore-ſeeing that it would be very inconvenient and prejudicious, nay, miſchevous, that mens poſſeſſions ſhould upon ſuch a ſodain, by the payment of a little money be tranſported from them, (and perhaps in a Tavern or Ale-houſe, and upon ſtraynable advantages) did diſcreetly provide in the ſame Parliament, the ſaid Act of 27. *H.* 8. *cap.* 16. that Lands, &c. upon the payment of money as aforeſaid, ſhould not paſs without a Deed indented and inrolled, as by the purport of the ſame Act may appear. Now ſeeing that before the ſaid Act of 27 *H.* 8. *c.* 16. Lands might paſs by bargain

and ſale upon conſideration, without deed indented and inrolled, and might not paſs without conſideration in ſuch manner, therefore I have heard Lawyers ſay that conſideration is ſtill required in a bargain and ſale, though it be by deed indented and inrolled, according to the ſame Statute. Sure I am that regularly in a deed of Feoffament, it is not ſo as formerly is declared, and for the reaſon before expreſſed.

Dediſſe.

The word *dedi* (by force of an act of Parliament made 4. *Ed.* 1. *c.* 4. commonly called the Statute *de Bigamis,*) implyeth a warranty to the Feoffee, and his Heires during the life of the Feoffor, whereupon *Fitz. Herbert* in his *Natura brevium. fo.* 134. *h.* puts a caſe to this effect, *viz.* If a man give Lands to one in Fee, by Deed, by the words *dedi, conceſſi, &c.* hereby he ſhal be bound to warrant the Lands of the Feoffee, by vertue of thoſe words, and if the Feoffee be impleaded he ſhall have his writ of *Warrant' Chart.* againſt the Feoffor, by reaſon of the words *Dedi, conceſſi, &c.* but not againſt his Heire, for the Heire ſhal not be bound to Warranty, except the Father binde himſelf and his Heires to Warranty, &c. by expreſs words in the deed. I know ſome alledg, that becauſe as well

well the Statute, as *Fitzh.* mention not onely *dedi.* but *conceſſi* alſo, therefore the one without the other, implyeth no warranty: to whom it may be anſwered that the Statute it ſelf doth plainly prove againſt them, for the concluſion thereof hath theſe words, *ipſe tamen feoffator invita ſua ratione proprii doni ſui tenetur warrantizare*; and alſo the Teſtimony of Sir *Edward Coke*, may be produced herein, who affirmeth that the Statute of *Bigamis*, *anno.* 14. *Eliz.* in the Court of Common Pleas was expounded, as above is mentioned, namely that *dedi* did imply the Warranty, and Mr. *Perkins*, *cap.* 2. ſaith that *dedi* in a deed of Feoffament, comprehendeth in it a Warranty, againſt the Feoffor, and ſo doth not the word *Conceſſi.*

Conceſſiſſe.

I conceive the word *conceſſi* in Feoffaments and Grants (the implyed warranty excepted which *dedi* creates) to be of the ſame effect with *dedi*; & alſo with *confirmavi*, eſpecially in ſome caſes: to which purpoſe hear what *Littleton* ſpeaketh in his Chapter of Diſcontinuance, Alſo (ſaith he) in ſome caſe this verbe *dedi*, or this verbe *conceſſi*, hath the ſame effect in ſubſtance, and ſhal enure to the ſame intent, as the verbe *confirmavi*; as if I be diſſeiſed of a carve of Land, and I make ſuch

a deed *Sciant presentes, &c. quod dedi* to the disseisor, &c. or *quod concessi*, to the said disseisor the said carve, &c. and I deliver onely the deed to him, without any livery of seisin of the Land, this is a good confirmation, and as strong in Law, as if there had been in the Deed this verb *confirmavi, &c.*

Liberasse.

The word *Liberavi*, I take to be of the same nature with *Tradidi*, which I have often seen in Feoffaments, whereof it is remarkable, that *Hephron* the *Hittite*, when he assured the field of *Machpelah* to *Abraham*, *Gen.* 32. 11. used the word *trado*: *agrum trado tibi*, that is, to *Abraham*, as *Hieromes* Translation reads it.

Feoffasse.

This word cometh from *feudum* or *feodum*, which signifieth Fee, and is alwayes, or for the most part used in Feoffaments, as participating of the same nature.

Confirmasse.

Concerning the word *confirmo*, somewhat may be gathered from what hath been spoken about the Verb *concessisse*, yet I cannot forget how *Hierome* renders the expresment of the said assurance of the said field of *Machpelah* to *Abraham* for a possession, in these words, *confirmatus est ager. &c. Gen.* 23. 17.

And

And now I come to the ſecond thing conſiderable in the premiſſes, namely, the Feoffee whoſe addition is *generoſo*.

Generoſo.

Generoſus, in Engliſh we read Gentleman, which ſome derive from the two French words, *Gentil-houme*, denoting ſuch a one as is made known by his birth, ſtock, and race. Sir *Tho. Smith* calleth all thoſe Gentlemen that are above the degree of Yeomen, whence it may be concluded, that every Noble-man may be rightly termed a Gentleman, *ſed non vìà versâ*. Maſter *Cowel* conceiveth the reaſon of the appellation to grow, becauſe they obſerve *Gentilitatem ſuam*, the propagation of their blood, by giving or bearing of armes, whereby they are differenced from others, and ſhew from what Family they are deſcended.

Hæredi & aſſignatis ſuis

Some will have an Heir ſo called, *quia hæret in hæreditate*, or *quia hæret in ſe hæreditas*, but to let ſuch conceits of witty invention paſs, it is certain, that an Heir is ſo called from the Latin word *Hæres*.

Littleton in his Chap. of Fee-ſimple ſaith, that theſe words (his Heirs) onely make the eſtate of inheritance in all Feoffaments, and

and Grants, &c. Sure then it is necessary for him that purchaseth Lands, &c. in Fee simple, to have the Feoffament run to himself *& hæredibus suis*, for if it run onely to himself, *& assignatis suis*, although livery and seisin be made accordingly, and agreeable to the deed; yet thereby onely an estate for life shall pass, because there wanteth words of Inheritance: and without livery and seisin in the case aforesaid, onely an Estate at Will shall pass. And the reason why the Law is so strict in this thing (as in many others) for to prescribe and appoint such certain words to create and make an estate of inheritance, is, as Master *Plowden* saith in his Commentaries, for the eschewing and avoiding of incertainty, the very Fountain and spring from whence floweth all manner of confusion and disorder, which the Law utterly contemneth and abhorreth; what herein hath been said, is to be apprehended and understood of persons in, and according to their natural capacities. Yet perhaps an estate of inheritance may sometime pass in a Deed of Feoffament, by words, which may have reference, and will relate to a certainty, for *Certum est quod certum reddi potest*: as for example, You Enfeoffe me and my Heirs of a certain piece of Land, to hold to me, & my Heirs, &c. and I re-

enfeoffe

enfeoffe you, in as large, ample, and beneficiall manner, as you enfeoffed me: in this caſe (they ſay) you have a Fee ſimple for the reaſon above expreſſed. So I come next to ſee what obſervations the Deed of Feoffament further affordeth.

Totam ill. pec. tre cont.

Very neceſſary and convenient it is in deeds of Feoffament, &c. to have the Lands, &c. thereby intended to be conveyed, certainely and expreſſely to be ſet downe, aſwell how much by eſtimation in quantity, they doe containe, as the quality of the ſame whether Meadow, Paſture, &c. being the ſpecies of Land, which is the *genus*, and the place where, and manner how they exiſt and lye, the better to ſhunne and avoid doubt, and ambiguity, which oftentimes ſtirre up occaſions of unkind ſuites and contentions betwixt party and party, I know that Grammarians reading the word *peciam*, will be ready to ſmile, and alledge, that it cannot defend it ſelfe *in bello Grammaticali*, which I eaſily confeſſe; but what then, what can they inferre from hence? will they therefore utterly condemne the uſe thereof? me thinkes they ſhould not, but might give Lawyers leave to ſpeakin their owne *Dialect*. But what, if ſome take exceptions at this word, having occaſion to meete with

with it here, what would they do, ſhould they read the volums of the Law, where inſtead of *bellum*, they ſhall find *guerra*, inſtead of *Sylva*, they ſhall find *boſcus*, and *ſubboſcus*, with a thouſand the like? Surely (as ſaith *Eraſmus*) they might commend or elſe condemn what they could not underſtand, or happily underſtanding, might admire from whence ſuch uncouth words ſhould proceed: for their better information (if I thought they would thank me for my labour) I could tell them that becauſe the *Saxons*, *Danes*, and *Normans*, have all had ſome hand, or at leaſt a finger in our lawes, therefore through the commixtion of their ſeveral Languages, it comes to paſs that ſuch difficult termes, and harſh Latin words (if I may ſo call them) are frequenly obvious in the books and writings of the Law. And indeed I ſee no reaſon why any man ſhould object or cavil againſt the uſage of ſuch words, though they be not claſſical, ſeeing that aſwel in the Art of Logick, as in Philoſophy, there are found many words, which they call *Vocabula artis*, vocables of Art, which can no better ſtand, according to the ſtrict rules of Grammar, then the ancient words of Law which cannot be changed without much inconvenience.

Acra.

Acra.

Acra, in Engliſh an Acre, ſeemeth to come from the Latin word *ager*; an acre is taken to be a quantity of Land containing 40 perches in length and 4 in breadth. Maſter *Crompton* in his Juriſdiction of Courts ſaith that a Perch is in ſome places more, and in ſome places leſs, according to the different uſages in different Countries, and ſo then it muſt needs be of an Acre. But ordinarily, or for the moſt part, a Perch is accounted, and eſteemed to contain 16 foot and an half in length. I take it to be the ſame with that meaſure which we call a Rodde or Pole. A Perch in Law-latin, is called *pertica*, or *perticata*. See the Ordinance made for meaſuring of Land, *anno* 34. *Ed.* 3. in *Pulton's abr.* titl. Weights and Meaſures.

Quaren.

Quarentena, in Engliſh a Furlong, or Furrow long: *Firlingus*, or *firlingum* is the ſame, it hath been ſometime accepted and taken for the eighth part of a mile, *anno* 35. *El. c.* 6. and I have read that *Firlingus*, or *ferlingus terræ continet* 32. *acras*. The Latins call it *Stadium*.

Ab-

Abbutt.

Abbutto is a verbe uſed by Lawyers, to ſhew how the heads of Lands do lie, and upon what other Lands or places, denoting for the more certainty, what Lands, &c. are adjacent about the Lands, &c. abbuttelled. And now that I may ſpeak once for all, in regard that Lawyers do uſe to abbreviate their words in writing, the reaſon is not as ſome ignorantly have ſuppoſed, becauſe they cannot expreſs their terminations and endings, as they ought to be, but becauſe of the multiplicity of buſineſs which they are to go through, oftentimes requiring very ſuddain diſpatch. Yet I could wiſh that the cuſtome of ſhort writing *alicui ſcriptori non eſſet diſpendium*, but I fear me too many hereby take occaſion to be wilfully ignorant, which otherwiſe peradventure they would not do.

Militis.

Miles, amongſt the Latins, ſignifieth a ſouldier, and in this place, and the like, *Miles* is to be Engliſhed a Knight, which (as Maſter *Cambden* noteth) is derived from the *Saxon Gnite*, or *Cnight*. The Heraldes will enform you of divers and ſandry orders of Knights, if you pleaſe to conſult with them,

or

or their writings thereabouts. A Knight at this day is, and anciently hath been, reputed and taken for one, who for his valour, and Proweſs, or other ſervice for the good of the Common-wealth performed, hath by the Kings Majeſty, or his ſufficient Deputy, on that behalf, been as it were lifted up on high, advanced above or ſeparated from the common ſort of Gentlemen: The *Romans* called Knights *Celeres*, and ſometimes *Equites* from the performance of their ſervice upon horſe-back, and amongſt them there was an order of Gentility, ſtiled *Ordo Equeſtris*, but diſtinguiſhed from thoſe they called *Celeres*, as ſeveral *Roman* Hiſtories do plainly teſtifie. The *Spaniards* call them *Cavalleroes*. The *French men Chivaliers*. And the *Germanes Rieters*, all which appellations evidently enough appear to proceed from the Horſe, which may be ſome teſtimony of the manner of the execution of their warlike exerciſes. And ſurely it is a very commendable policy in States to dignifie well deſerving perſons with honorable Titles; that others may thereby be ſtirred up to enterprize, and undertake Heroick Acts, and encouraged to the imitation of worthy and renowned vertues.

Ar-

Armig.

Armiger, in Engliſh ſignifieth Eſquire, from the *French Eſcuier*, and perhaps an Eſquire may be called *Armiger quaſi arma gerens*, from his bearing of armes. Ancient Writers, and Chronologers, make mention of ſome who were called *Armigeri*, whoſe office was to carry the ſhield of ſome Nobleman. Maſter *Cambden* cals them *Scutiferi*. which ſeems to import as much, and *homines ad arma dicti*: they are eſteemed and accounted of amongſt us next in Order to Knights.

Clerici.

Clericus, in Engliſh we read Clerke. It hath with us two ſundry kindes of acceptations. In the firſt ſenſe it noteth ſuch a one, who by his practiſe and courſe of life doth excerciſe his pen in any the Kings Majeſties Courts, or elſewhere, making it his calling or profeſſion; hereupon you ſhal find in the current of Law, mention made of divers Clerkes; as for example, The Clerke of the Crown: The Clerke of Aſſiſe: The Clerke of the Warrants: The Clerke of the Market: The Clerke of the Peace, with many others. In the ſecond ſenſe it denoteth ſuch a one as belongeth to,

and

and is imployed about the Miniſtry of the Church, that being his function: in which ſignification it is to be taken in this place, and in the like; for I, for my part, did never find Clerk in the firſt ſenſe appropriated to any, as an addition ſimply. We have the uſe of the word *Clericus*, from *Clerus*, or *Clerecutus*, ſignifying the Clergy, that is to ſay, the whole number of thoſe, which properly ſo called, or rather ſtrictly, are *de Clero domini, i. e. Hereditate ſive ſorte domini*, for *Clerus* cometh from κλῆρος, a Greek word, ſignifying the ſame with *ſors* in Latine; namely, a lot or portion.

The Habendum.

Habend.

THe Office of the *Habendum*, is to name again the Feoffee, and to limit the certainty of the eſtate, and it may and doth ſometimes qualifie the generall implication of the eſtate, which by conſtruction and intendment of Law paſſeth in the premiſſes: for an example whereof ſee *Bucklers* caſe in the ſecond Book of Sir *Ed. Cokes* Reports, and *Throgmortons* caſe, in *Plowdens* Commentaries. It is to be noted, that the premiſſes may be inlarged by the *Habendum*, but not abridg-

ed, as it plainly appeareth, aſwell in the ſaid caſe of *Throgmorton*, as in *Worteſlies* caſe reported alſo by Maſter *Plowden*, and I have read (as my collections tell me) that it is required of the *habendum*, to include the premiſſes. Moreover, the *habendum*, (as *W. N.* Eſquire, hath it in the treatiſe of the grounds and maximes of the Law) muſt not be repugnant to the premiſſes, for if it be, it is void, and the Deed will take effect by the Premiſſes, which is very worthy of Obſervation.

The Tenendum.

Tenend'.

THe *Tenendum*, before the Statute of *Quia emptores terrarum*, made 18. *Ed.* 1. was uſually *de Feoffatoribus & hæredibus ſuis & non de capitalibus dominis feodorum, &c. viz.* of the Feoffors, and their Heires, and not of the chief Lords of the Fee, *&c.* whereby there hapned divers inconveniences unto Lords, as the loſing of their Eſcheats, or forfeitures and other rights belonging to them by reaſon of their *Seigniories*, which as the ſame Statute expreſſeth it, *durum & difficile videbatur, &c.* whereupon it was granted, provided and enacted *quod de cætero liceat unicuique libero homini*

terra

terras ſitas ſeu tenementa ſua, ſeu partem inde ad voluntatem ſuam vendere, ita tamen quod feoffatus teneat terram illam ſeu tenementum illud de capitali domino feodi illius per eadem ſervitia & conſuetudines per quæ feoffator ſuus illa prius de eo tenuit. & eſtat' fuit fait (as ſaith one) *pur l'advantage de Senior'*, which ſtatute was made for the advantage of Lords, and indeed I eaſily believe it. Now it is evident from that which hath been declared out of the ſaid Statute, that at this day the *tenendum*, where the Fee ſimple paſſeth, muſt be of the chief Lords of the Fee, &c. for no man ſince the ſaid Statute could convey Lands in Fee, to hold of himſelf, out of which rule the King only (I think) may be excepted, and 'tis not in ſilence to be paſſed over, that where Lands, &c. are conveyed in Fee, though there be no *tenendum* at all mentioned, yet the Feoffee ſhall hold the ſame in ſuch manner as the Feoffor held before, *quia fortis eſt legis operatio*: the Statute ſo determines.

The clauſe of Warranty.

Et ego & hæredes mei, &c. warrantizabimus, &c. defendemus, &c.

Warrantizo, is a verb uſed in the Law, and onely appropriated to make a

Warranty. *Littleton* in his chapt. of Warranty ſaith, *Que ceſt parol, &c.* that this word *Warrantizo*, maketh the Warranty, and is the cauſe of Warranty, and no other word in our law, and the argument to prove his aſſertion, is produced from the form and words uſed in a fine, as if he ſhould ſay, Becauſe the word *defendo*, is not contained in fines to create a Warranty, but the word *warrantizo* onely, *ergo*, *&c.* which argument deduced and drawn *à majori ad minus*, is very forcible, for the greater being inabled, needs muſt the leſſer be alſo inabled: *Omne majus in ſe continet quod minus eſt, & quod in majori non valet, nec valet in minori.* But certainly *Littleton* is to be underſtood only of an expreſs warranty indeed, and of a warranty annexed to Lands, for there may be, and are other words, which will extend and inure ſufficiently to warrant chattels, &c. and which will imply a warranty in Law, as *dedi*, *&c.* and *excambium* (as I have heard ſay) implyeth a warranty in Law, which from *Glanvil's vel in excambium*, or *eſcambium datione lib. 3. cap. 1.* may receive ſome confirmation: And *Littleton* in his Chapter of *parceners*, teacheth that partition implyeth a warranty in Law, &c. And leſt ſome may here ſay, that *defendemus* ſtands for a cypher, I will tell them what

Bracton

Bracton declareth of it, speaking about a warranty in deed, from the Feoffor and his heirs, whose words are these: *per hoc autem quod dicit (scilicet Feoffator) defendemus, obligat se & hæredes suos ad defendendum si quis velit servitutem ponere rei datæ contra formam donationis, &c.* Lawyers in their Books make mention of three kindes of Warranties, *viz.* Warranty lineall, Warranty collaterall, and Warranty which commences by disseisin. The first is when one by Deed bindeth both himself and his heires to Warranty, and after death, this warranty discendeth to and upon his Heire. The second is in a transverse, or overthwart line, so that the party upon whom the warranty descendeth, cannot convey the title which he hath in the Land, from him that was the maker of the Warranty. The third and last is, where a man unlawfully entreth upon the Freehold of another, thereof disseising him, and conveyeth it with a warranty, but this last cannot barr at all. Of these, you may read plentiful and excellent matter and examples in *Littletons* Chapter of Warranty, and Sir *Ed. Coke*, learnedly commenting upon him, to whom for further illustration hereof, I referr you, as also unto Master *Cowels* interpretation of words in the title Warranty, who there remembreth divers

things very worthy obſervation concerning it. Before I come to the fifth part of the Deed of Feoffament, give me leave to obſerve that a Warranty alwayes deſcendeth to the Heire at the Common Law, and followeth the Eſtate (as the ſhadow the ſubſtance) and whenſoever the Eſtate may, the Warranty may alſo be defeated, and every Warranty (as ſaith Sir *Ed. Coke*) which deſcends, doth deſcend to him that is Heire to him which made the Warranty, by the Common-Law.

And moreover it is to be noted, as may be gathered from what hath been formerly ſaid, that an Heire ſhal not be bound to an expreſs Warranty, but when the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were never bound, the Heire ſhall never be charged. And I remember I have read a caſe in *Br. abr.* 35. *H.* 8. *pl.* 266. to this purpoſe. *Si home dit en ſon garrantie, Et ego tenementa prædicta cum pertinentiis præfato A. B. le donee warrantizabo, & ne dit, ego & hæredes mei, il meſme garrantera, mes ſon heire neſt tenus de garranter, pur ceo que* (Heires) *ne ſont expreſſe en le garranty. B. garr.* 50. So I will forbeare to ſpeake any further herein, being a very intricate and abſtruſe kinde of learning, requiring the pen of a moſt cunning and experienced Lawyer

yer, and now I addreſs my ſelf to the fifth orderly, or formall part of the Deed of Feoffament

The clauſe of in cujus, &c.

In cujus rei teſtimonium.

THis clauſe is added as a preparatory direction to the ſealing of the Deed, for ſealing is eſſentially required to the perfection thereof, becauſe it doth plainly ſhew the Feoffors conſent to, and approbation of what therein is contained, hereupon it will not be much devious or out of the way, to make ſome mention of thoſe faſhions, which in the manner of ſealing, and ſubſcribing of deeds, have been anciently uſed by our Anceſtors: Some report that the *Saxons* in their time, before the Conqueſt, uſed to ſubſcribe their names to their Deeds, adding the ſigne of the croſſe, and ſetting down in the end, the names of certain witneſſes, without any kinde of ſealing at all. But when the *Normans* came in, as men loving their owne Country guiſes, they *per petit & petit* changed that cuſtome (as alſo many others) which they found here, and *Ingulphus* who was made Abbot of *Croyland*, in *an. dom.* 1075. ſeemeth to confirme this opinion in theſe words; *Normanni cheirographorum confectionem cum crucibus aureis, &*

aliis signaculis sacris in Anglia firmari soli-tum, in cera impressa mutant. Yet I have read of a sealed Charter in *England* before the Conquest, namely that of St. *Ed.* made to the Abby of Westminster: yet surely this doth not altogether repugne that which hath been formerly said, for I have seen in Master *Fabians* Chronicle, and elsewhere that Saint *Ed.* was educated in Normandy, and tis not unlikely but he might in some things incline to their fashions. The French-men have a proverbe, *Rome n'a este bastie tout en un jour*; and we in England use the same, namely Rome was not built in one day: So it cannot be conceived that the Normans in an Instant did alter the Saxon custome wholly in this particular, but that it did change by degrees, and perhaps at the first, the King and some nigh unto, and about him did use the impression of a Seale, which I am somewhat perswaded to beleeve, from a certain story which I have heard, concerning *Richard de Lucy*, chief Justice of England, who in the time of *H.* 2. is said to have chidden an ordinary man, because he had sealed a Deed with a private Seal *Quant ceo pertaine al Roy & Nobility solement.* In the dayes of *Edward* the third, sealing and Seales were very usuall amongst all men, for proofe whereof I need not produce any other testi-

mony,

mony, but the Deeds themſelves, whereof almoſt every man hath ſome. But I muſt remember that Sir *Ed. Coke*, in the firſt part of his Inſtitutes, *fo.* 7. *a.* ſeemeth to overthrow the former opinions about the firſt uſing of Seales in England, The ſealing of Charters and Deeds, (ſaith he) is much more ancient then ſome have imagined, for the Charter of King *Edwin* brother of King *Edgar*, bearing date *an. dom.* 956. made of the Land called *Jecklea*, in the Iſle of *Ely*, was not onely ſealed with his owne ſeale (which appeareth by theſe words) *Ego Edwinus gratia Dei totius Britannicæ telluris Rex meum donum proprio ſigillo confirmavi*; but alſo the Biſhop of Wincheſter put to his ſeal, *Ego Ælfwinus Wintoñ Eccleſiæ divinus ſpeculator proprium ſigillum impreſſi.* And the Charter of King *Offa*, whereby he gave the *Peter*-pence, doth yet remain under Seal. The either of which two Charters, are much more ancient then that of Saint *Edw.* before mentioned, yet happily there may be ſome reaſon probably affirmed why as well King *Edwin* and the Biſhop of Wincheſter, as *Offa*, who was King of *Mercia* about the yeare 788. did annex their Seales to their Charters, which no King of England or Nobleman did before or after them, (except Saint *Ed.*) untill the comming in of the Con-

Conquerour, that ever I could learne, heare, or read of, in any Authour. Nevertheleſſe, I muſt of neceſſity leave the ſearch of ſuch reaſon to others better ſtudyed in the Commentations and alterations of perſons, times, and cuſtomes then I my ſelfe, however I never heard any one deny, but that the frequent uſe of ſealing Deeds did commence in the time of *Ed.* 3. and was not ordinarily uſed amongſt private men untill then, as hath been formerly touched.

Of the Date.

Dat'.

IN this clauſe the Stile of the King at large, the yeare of his Reigne, and the yeare of our Lord God, according to the computation and account of the Church of England, together with the day of the moneth are expreſſed. In former times Deeds were often made without date, and that of purpoſe, that they might be alledged within the time of preſcription, as Sir *Ed. Coke*, in his ſaid Booke of Inſtitutes, *fo.* 6. very worthily obſerves, and moreover that the date of Deeds, was commonly added in the Reigne of *Ed.* 2 and *Ed.* 3. and

3. and ſo ever ſince, to whom I refer you, who in the place laſt quoted, hath very excellent matter and obſervations thereabouts. And thus to perform what I promiſed, I will ſpeak a word or two concerning Livery of Seiſin, and ſo conclude.

Livery of Seiſin.

LIvery of Seiſin is a ceremony in Law, uſed in the conveyance of an Eſtate of Free-hold at the leaſt in Lands and other things corporeal: but in a Leaſe for years, at Will, &c. Livery of Seiſin is not required, it being onely a Chattel and no Free-hold. By Livery of Seiſin, the Feoffor doth declare his willingneſs to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made known and manifeſt. The Author of the new Termes of the Law, ſaith that it was invented as an open and notorious thing, by means whereof the Common people might have knowledge of the paſſing or alteration of Eſtates from man to man, that thereby they might be the better able to try in whom the right and poſſeſſion of Land s and Tenements were

if

if they should be impanelled on Juries, or otherwise have to do concerning the same. The usual and common manner in these daies of delivering of Seisin, I know to be so frequent, that of purpose I will omit it: But I pray you note with me before I make an end, that Livery of Sesin is of 2 sorts, *viz.* Livery of Seisin in Deed, and Livery of Seisin in Law, which is sometimes termed livery of Seisin within the veiw. Livery of Seisin within the veiw cannot be good or effectual, except the Feoffee doth enter into the Lands, &c. whereof the Livery of Seisin was made unto him in the life time of the Feoffor; & it is not to be passed over in silence, that a Livery in Law may sometimes be perfected by an entry in Law, as if a man maketh a deed of Feoffament, and delivers Seisin within the view, the Feoffee dares not enter for fear of death, but claimes the same, this shall vest the Freehold and inheritance in him, to which effect you may see the opinion of certain Justices, 38. *Assis. Pl.* 23. upon a verdict of Assise in the County of *Dorc.* And I conceive that this vesting of a new Estate, in the said case in the Feoffee, making his claim were he dares not enter, stands upon the same reason, for (*contrariorum eadem est ratio*) that the revesting of an ancient Estate and Right in the disseisee

seisee doth by such claim, whereof you may read plentifully in *Littleton* his Chapter of *Continual Claim*. It is worth the observation that no man can constitute another to receive Livery for him, within the view, nor yet to deliver (as I have heard my Master say) for none can take by force or vertue of a Livery in Law, but he that taketh the Free-hold himself, *& è contra*. Otherwise it is to take and give Livery of Seisin in Deed, for there alwel the Feoffee in the one case may ordain and make his Attorney, or Attorneys in his name and stead, to take Livery, as the Feoffor in the other case to give Livery, *Concurrentibus iis quæ in jure requiruntur*. And now let Delivery of the Deed to be added to the sealing thereof, and the state executing of the Lands thereby conveyed, and then I presume none will refuse to allow that every thing hath been named, which is essentially required to the perfection of a bare Deed of Feoffament, and although I have mentioned the delivery of the Deed in the last place, yet it is not the least thing, or of the least consequence or moment, for after a Deed is sealed, if it be not delivered, *est a nul purpose*, it is to no purpose, and the delivery

livery must be by the party himself, or his sufficient warrant: So it may be gathered from what hath been said, that sealing of Deeds without Delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery must concur and meet together, to make perfect Deeds.

I hope such as are present at the Sealing and Delivering of Deeds of Feoffament, and the State executing thereupon, will not forget to subscribe their names, or markes, as witnesses thereof, whereby they may the better be inabled to remember what therein hath been done, if peradventure there shall be occasion to make use of them. And it is not amiss here before I end, to observe, that although upon Deeds of Feoffament, &c. it was not usual before the latter end of *Hen.* 8. or thereabouts to endorse or make mention upon such Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my self have many Deeds of Feoffament which do testifie as much) yet it is to be credibly supposed, and not without some manifest probability, that such persons whose names are inserted after a certain

certain clauſe in ſuch Deeds, beginning with *hiis teſtibus*, were eye-witneſſes of all. Thus deſiring you to take notice that I have called the ſaid ſix parts of the Feoffament formal, becauſe they are not abſolutely of the eſſence of Deeds,&c. *manebo in hoc gyro.* I will here conclude, requeſting all thoſe to whom any ſight hereof ſhall, or may happen to come, friendly to admoniſh me of my failings herein: Whereby they ſhall ever engage me thankfully.

FINIS.